

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA)	CRIMINAL ACTION NO.
)	2:18-cr-12
vs.)	
)	
RANDY SHELTRA,)	
Defendant.)	

SENTENCING
Tuesday, November 23, 2021
Burlington, Vermont

BEFORE:

THE HONORABLE CHRISTINA C. REISS,
District Judge

APPEARANCES:

BARBARA A. MASTERSON, ESQ., and ANDREW C. GILMAN, ESQ., U.S.
Attorney's Office, 11 Elmwood Avenue, 3rd Floor, P. O. Box
570, Burlington, VT 05402-0570, Counsel for the Government

MARK A. KAPLAN, ESQ., Kaplan and Kaplan, 95 St. Paul Street,
Suite 405, Burlington, VT 05402-0405, Counsel for the
Defendant

ALEXANDRE BONNEVILLE, U.S. PROBATION

RANDY SHELTRA, DEFENDANT (VIA VIDEOCONFERENCE)

Johanna Massé, RMR, CRR
Official Court Reporter
P. O. Box 5852
Burlington, VT 05402
802-951-8102 | 802transcripts@gmail.com

1 Tuesday, November 23, 2021

2 (The following was held in open court at 1:31 PM.)

3 COURTROOM DEPUTY: Your Honor, the matter before the
4 Court is criminal case number 18-CR-12-1, United States of
5 America vs. Randy Sheltra. Representing the Government are
6 Assistant United States Attorneys Barbara Masterson and Andrew
7 Gilman; present for the defendant is his attorney, Mark Kaplan;
8 the defendant is present via videoconference; and we are here
9 for sentencing.

10 THE COURT: Good afternoon.

11 MR. KAPLAN: Good afternoon, your Honor.

12 THE COURT: Mr. Sheltra, you have waived your
13 appearance here. We had a telephone conference yesterday, and
14 your attorney advised me that you did not want to appear in
15 person and did not want to take a COVID test and that one of
16 the reasons would be that you would be in quarantine upon your
17 appearance here.

18 I want to make sure that you are in fact knowingly waiving
19 your appearance to be here at sentencing, because I told your
20 attorney I would not want to see this issue come up later that
21 you wanted to be present and we didn't accommodate that
22 request.

23 So if you told me that you wanted to be present in person,
24 I would simply continue the sentencing for another date.

25 Let's hear your preference on that.

1 THE DEFENDANT: Well, my preference, your Honor, at
2 this point, we've had a number of people from the pod that I'm
3 in that had tested positive for COVID. I've been vaccinated,
4 and, you know, I thought that was going to be enough, but I --
5 I experienced limited symptoms, and so I don't know whether I
6 am or not because I didn't want to take another test and be
7 quarantined.

8 So what Mr. Kaplan expressed to you is accurate. We had
9 asked for a 60-day delay on this and it got denied. If that
10 were the case and if that 60 days was put in place, I would
11 certainly prefer to be there, but that's -- that being said,
12 I'm not going to expose other people if I don't have to to
13 COVID.

14 THE COURT: All right. I would not give you a 60-day
15 continuance. We would come back sometime next week, for
16 example, for sentencing so you could be here in person.

17 THE DEFENDANT: Then --

18 THE COURT: Pardon me?

19 THE DEFENDANT: I see no reason to do that, your
20 Honor. Let's just finish with it.

21 THE COURT: All right. I'm going to accept your
22 waiver of appearance. I'm going to find that were we to
23 transport you to the District of Vermont, we would needlessly
24 expose you and others to potential infection from COVID-19.
25 You are currently incarcerated in a location which has had

1 COVID-19. Even when people are vaccinated, they can contract
2 it, and that includes our marshal and other staff. The Court's
3 going to find that videoconference is the best reasonably
4 available technology at this time, and under the CARES Act, the
5 Court's going to find it's in the interest of justice to
6 proceed by videoconference.

7 I have read the presentence report; the sentencing
8 memoranda; your supplemental exhibit in support of the
9 sentencing memoranda; the victim impact statement.

10 And let me make sure you have read the presentence report
11 as well, Mr. Sheltra.

12 THE DEFENDANT: I have.

13 THE COURT: And have you had an opportunity to review
14 it with your attorney?

15 THE DEFENDANT: Yeah. I talked to Mr. Kaplan about
16 it, and he put forth the -- what you're looking at as far as
17 our response.

18 THE COURT: All right. Anything inadequate about that
19 review?

20 THE DEFENDANT: Just a couple of date things. The
21 time -- you know, minor things. But I think Mr. Kaplan did a
22 very good job of assessing the current situation.

23 THE COURT: Okay. I know you are making certain
24 objections to the presentence report. The primary factual
25 objection from the Court's perspective is you are challenging

1 the statements of what the Government is calling Victim 1 in
2 paragraphs 24 through 31. This is the alleged statements from
3 your niece.

4 THE DEFENDANT: Yes.

5 THE COURT: Are there any -- yes.

6 Are there any other factual errors in the report from your
7 perspective?

8 MR. KAPLAN: Judge, I think --

9 THE DEFENDANT: Not -- not that I recall.

10 THE COURT: Not that you recall. And I'll turn to
11 your attorney in case he sees some.

12 THE DEFENDANT: Okay.

13 THE COURT: So, Mr. Kaplan, go ahead.

14 MR. KAPLAN: I would just indicate that we have a
15 general objection to all of the facts that might suggest he's
16 guilty of the -- of the charged conduct, and our assumption is
17 that the Court will make a decision on that based on what you
18 heard at trial and/or the transcript, so we're not asking for
19 an evidentiary hearing on that issue.

20 THE COURT: I did see you object to the presentence
21 report somewhat in its entirety. I didn't see a specific
22 objection to "This trial testimony is not accurate. That's not
23 what happened." Do I have that right?

24 MR. KAPLAN: Yes.

25 THE COURT: Okay. And other than the statements from

1 the interview of Victim 1, are there any other specific facts
2 that you contend are wrong in the presentence report?

3 MR. KAPLAN: No, your Honor.

4 THE COURT: How about from the Government's
5 perspective? Any factual challenges to the presentence report?

6 MS. MASTERSON: No, your Honor.

7 THE COURT: All right. I will hear arguments on the
8 inclusion of the interview of Victim 1, whether it should be in
9 the presentence report, what the Court should do with it.

10 There are a number of guideline challenges. One is the
11 use-of-the-computer enhancement. The other is obstruction of
12 justice. And I raise for you *sua sponte* the issue of whether
13 or not Mr. Sheltra should be prevented from accessing adult
14 pornography when he's on supervised release. The circuits are
15 addressing this condition with increasing focus. Second
16 Circuit has not squarely ruled on that except that it seems to
17 be developing by a case-by-case method.

18 And so I was thinking that I would add "You must not view,
19 access, or possess images or videos depicting sexually explicit
20 conduct involving adults unless a psychosexual evaluation
21 determines that access to adult pornography will not threaten
22 treatment goals or the safety of the community." It hasn't
23 specifically been challenged by Mr. Kaplan, but I anticipate
24 that we're going to get more case law on this.

25 Any objection to the Court's modifying of that condition

1 in that manner?

2 MR. KAPLAN: No, your Honor.

3 THE COURT: I can read it for you again if you'd like.

4 MS. MASTERSON: Would the Court do so, please.

5 THE COURT: Sure. "You must not view, access, or
6 possess images or videos depicting sexually explicit conduct
7 involving adults unless a psychosexual evaluation determines
8 that access to adult pornography will not threaten treatment
9 goals or the safety of the community."

10 MS. MASTERSON: I do know that there is a case in the
11 Second Circuit that has addressed the use of child -- I'm
12 sorry, adult pornography -- or maybe it's a district case,
13 because Judge Murtha ruled, and I didn't know that this was
14 going to be an issue, so if I had known, I would have accessed
15 that cite, but I do know that Judge Murtha has had -- addressed
16 this issue and found adult pornography would be detrimental and
17 therefore included it over a defendant's objection in the terms
18 and conditions of supervised release.

19 That said, it is an evolving legal issue, and I think that
20 the way the Court has written it is appropriate. If there's
21 going to be a modification, the Court hit it.

22 THE COURT: Mr. Kaplan?

23 MR. KAPLAN: I agree, your Honor. Thank you.

24 THE COURT: Okay. I think that lends it more to a
25 case-by-case approach, and that seems to be the developing

1 consensus that there needs to be a basis in this particular
2 case for denying access to adult pornography.

3 I'm going to tell you some of the things that I am
4 thinking about in this case, and I hope to hear them in your
5 sentencing arguments. But tell me what you want to tell me,
6 whether I've addressed it or not.

7 With regard to the obstruction of justice, the defendant's
8 testimony that he was not sexually interested in children has
9 an objective component and a subjective component, and I recall
10 that we saw I think at least one image of child pornography on
11 his phone as impeachment evidence. The graphic communications
12 certainly support that as well. But even if the Court said,
13 yeah, denying that you're sexually interested in children is
14 only a partial mistruth because you're also interested in a lot
15 of other things, we have the statement with the Treena. So the
16 testimony that "I thought I was talking with Treena" and the
17 chronology of that is that Mr. Sheltra asked for the images
18 from ER prior to the mention of anal sex, and it was the anal
19 sex mention that made him think he was talking to Treena. So
20 I'm interested in hearing your points of view on whether or not
21 we have an obstruction of justice in those circumstances,
22 whether we need both of them or if one is sufficient.

23 With regard to the computer enhancement, in a
24 straightforward child pornography case, the Court has not been
25 imposing the computer enhancement. For example, with

1 peer-to-peer sharing of child pornography, it's the means by
2 which the offense is committed. There is no other way to do it
3 other than through a computer. I have imposed it and I have
4 imposed it very recently when the person is using the computer
5 for actively soliciting child pornography, the person's in chat
6 rooms, the person is finding ways to access alleged victims or
7 child pornography or finding like-minded individuals. This
8 case would certainly fall within that category.

9 With regard to Victim 1's statements, as the parties will
10 recall, one of the issues in this case was whether or not Mr.
11 Sheltra was going to pursue a defense theory that after his
12 stroke his personality was changed and that this is
13 stroke-related behavior. And the Government sought to rebut
14 that line of defense with his niece's testimony, and I believe
15 she was on the Government's witness list for that purpose. So
16 she is in the case.

17 On the other hand, there are, from the Court's
18 perspective, no sworn statements from her. She never testified
19 before the grand jury. And her testimony is -- or her
20 statements are quite inflammatory, and I was wondering whether
21 it made sense in terms of fairness to both parties, which I
22 assume both of you are going to dislike this, that I would keep
23 paragraph 24, 29, and 31, with 31 being modified to indicate
24 the "alleged" abuse, and the details of what Victim 1 is
25 claiming excluded from the presentence report.

1 And my thoughts are I certainly respect the Government's
2 position that it's not going to call Victim 1 as a witness,
3 that it would be damaging to her, but unless it's captured in a
4 sworn statement or grand jury testimony, I'm questioning
5 whether I can find it is reliable. I think it's relevant that
6 after the case was filed, this woman on her own reached out to
7 law enforcement. I think it's important for her statements to
8 indicate when she said the alleged abuse occurred and her
9 reason for not pursuing it further, and I think it's relevant
10 to hear how old Mr. Sheltra was when the victim says the abuse
11 started and when it ended. The other details, I'm wondering
12 why the Government should not have to prove those up. So I
13 want to hear your arguments on that.

14 Of course, I want to hear what you think is the
15 appropriate period of incarceration and supervision. I am not
16 going to set aside the fact that we're in the middle of a
17 pandemic and that Mr. Sheltra has contracted COVID during his
18 incarceration and that programming and quarantining and
19 segregation, you know, remain kind of the rule of what is
20 happening during this pandemic. And I should say lack of
21 programming. So these are very different conditions of
22 incarceration, and at this point the Court does not know how
23 long that's going to last.

24 I'm going to start with you, Mr. Kaplan, on all points,
25 including 3553(a) factors; I'll ask Mr. Sheltra if he wants to

1 make a statement on his own behalf; I'll ask the Government for
2 its arguments; I'll give Mr. Kaplan the last word; I will rule
3 on the guideline challenges and the factual objection to the
4 presentence report; I'll do a guideline calculation, analyze
5 the 3553(a) factors, and notify the parties of their rights of
6 appeal.

7 So, Mr. Kaplan.

8 MR. KAPLAN: Your Honor, I'll speak to the obstruction
9 issue first and just make a general comment. The way I looked
10 at my client's testimony had more to do -- I think the Court
11 started off by saying there's objective and subjective issues
12 with respect to obstruction, and what I focused on was the fact
13 that my client testified consistently that he did not intend to
14 commit these crimes.

15 Now, I'll acknowledge that there was some conflict on
16 specific issues; in other words, whether or not, for example,
17 he had any physical contact with a 15-year-old in Count 2. My
18 client said he didn't. There was some evidence introduced that
19 he did. But throughout the entire trial, he was consistent
20 with the fact that he didn't intend to have sexual contact with
21 a minor, and so that's what I think the focus should be on the
22 issue of obstruction.

23 In other words, even though the jury found him guilty of
24 these particular crimes, that doesn't mean that he intended to
25 obstruct justice, that he was flagrant in his -- with respect

1 to telling the truth or not telling the truth.

2 THE COURT: Well, if it stayed on that, "I didn't
3 intend to do any of it," that would be one thing. It went
4 further than that, though. And there's -- it's not just some
5 vague intent. If we take the messages to the third person
6 about what was going to happen with ER, he says, "We were going
7 to have sex. We couldn't do it because we were out on some
8 country road, but, yeah, we were going to have sex."

9 MR. KAPLAN: But he also gave an explanation as to why
10 he said that, and he said it was because of his intent with
11 respect to the third person, what he was trying to get her to
12 come out and talk about. Now, that may not be something that
13 the Court believes to be true, necessarily. But again, it all
14 goes back to, well, Mr. Sheltra said he said that for a
15 particular reason. The jury may not have believed that, but it
16 doesn't necessarily mean that in his own mind it wasn't true
17 and that's what he was thinking.

18 I don't see a case here where, for example, there's a
19 yellow car going down the road, everyone knows it's yellow, my
20 client said "I saw it and it's red." It's not clear like that,
21 because I think we're dealing all the way through the
22 conflicting statement with what Mr. Sheltra's intent was. And
23 I think it would be unfortunate to give an obstruction
24 enhancement because there's a disagreement between what the
25 Government witness says and what my client says without any

1 actual proof other than statements being made.

2 THE COURT: What if the Court takes him at his own
3 word, his own written communications? What if the Court says,
4 "I've got it in black and white what your intent was"? And
5 yes, of course you're entitled to testify and say that wasn't
6 my true intent and the jury can analyze it, but it's not just a
7 he said/she said. There are written communications expressing
8 intent.

9 MR. KAPLAN: Well, I mean, that's the crux of the
10 issue. That's really this trial, this case, because he took
11 the stand and said, "Sure, I said all those things, but here's
12 why I said them. And the reason I said them wasn't for the
13 purpose of having sex with a minor." And the jury apparently
14 didn't believe that. But was he lying when he said that? I
15 mean, you can take him -- if you take him at face value, then
16 I -- which is what I'm assuming the jury did, although I don't
17 know, but if you do that, then you're taking the position that
18 he's lying on everything he says, and he's saying, "No, it's
19 not right to take it at face value. That's what I meant when I
20 said that."

21 So, you know, I can understand why someone, particularly
22 in a case like this, might take it at face value, but I also
23 think you have to understand that he has an explanation for why
24 he said those things. To me the explanation's credible. He
25 says, "I said all these things for a particular purpose." In

1 fact, I'll go back even further, which is the first set of
2 emails that was between him and someone who was posing as the
3 mother of a child. He literally was extremely surprised when
4 that particular person raised the issue of having sex with a
5 minor, and so that's what kind of convinced me that there was
6 some truth in his statement that he never started out with the
7 intent of wanting to have sex with a minor.

8 And I know I pointed this out to the jury that he
9 genuinely was surprised by some of the responses he was getting
10 from the people he was dealing with; by the time he dealt with
11 the undercover agent, he no longer was surprised because he
12 knew that kind of thing was going on. I don't see it as being
13 flagrant or with an intent to obstruct justice.

14 THE COURT: Let's talk about what the Court thinks is
15 the most direct example, and that's the Treena where the
16 defendant testified that when he asked ER to send him pictures
17 of her genitalia, he thought he was communicating with Treena,
18 who was an adult woman with whom he was engaged in a sexual
19 relationship, and his relationship with her involved anal sex,
20 and that when ER mentioned engaging in anal sex with her
21 boyfriend, that's when he thought it was Treena but actually he
22 asked for the pictures before there was any mention of anal
23 sex.

24 MR. KAPLAN: So there was -- there was a line of
25 emails between Mr. Sheltra and Katrina, and I think I marked it

1 as an exhibit. I don't recall if I admitted it or not. I
2 think I did. And that -- the time frame on those emails was
3 pretty close in time to when he was -- when he was dealing with
4 ER. And so when I showed that to him, he said, "That's what I
5 meant." You know, it may be inconsistent, you know, in some
6 respects, but it's not inconsistent with the fact that he was
7 having these email conversations with Katrina, that they were
8 similar in nature, and that's who he thought he was dealing
9 with when he got the responses.

10 THE COURT: You said Katrina, but I think you mean
11 Treena?

12 MR. KAPLAN: Yes.

13 THE COURT: Yes. Maybe that's her nickname. I don't
14 know. Okay.

15 MR. KAPLAN: I'm wondering if that's enough to find
16 obstruction. I mean, the thing that's always bothered me with
17 regard to the Sentencing Guidelines with respect to acceptance
18 of responsibility and obstruction is the defendant has to
19 decide am I going to go to trial and take the risk of losing
20 three levels for -- for acceptance of responsibility, so it's a
21 real inhibitor for someone in a close case who thinks that they
22 have a triable case.

23 And I also have to tell clients if you're going to try a
24 case and you're going to testify, there's an excellent chance
25 the Government's going to ask for obstruction, and so to me the

1 obstruction should be somewhat limited to major things in the
2 case, not discrepancies between some minor issues that really
3 don't go to the heart of the case.

4 Like, these pictures don't show, necessarily, that he was
5 interested in having a sexual relationship with a minor,
6 whether or not he asked for them, and so I think it's an
7 unfortunate prohibition -- on inhibition on people testifying.

8 THE COURT: Well, the Court has not always denied
9 acceptance of responsibility or imposed an enhancement for
10 obstruction of justice for anybody who testifies at trial. It
11 has to be a fairly -- it has to be a factual issue, and the
12 testimony has to be false. And the Government and the
13 Probation Office has pointed out two things that they contend
14 are factually false: sexual interest in children and the
15 belief that communications with ER were really with Treena. So
16 those are things that could be proved or disproved, and so it's
17 not just: You took the stand; you testified at trial; you
18 shouldn't have gone to trial; we're denying acceptance of
19 responsibility. These are facts that could be proved true or
20 not true.

21 MR. KAPLAN: But to me a sexual interest in children,
22 the only thing that I can see as what the Court's referring to
23 is that he asked for pictures, allegedly, as opposed to his
24 testimony that he wasn't interested, and he was consistent with
25 that throughout the -- his entire testimony.

1 THE COURT: Well, the Court's pointing to child
2 pornography on his phone; statements about wanting to have sex
3 with children, very detailed statements, and not just one child
4 but both the person he thought he was communicating with before
5 the events and then the undercover officer after the events;
6 his statements to ER about what he wanted her to photograph.
7 So it isn't just kind of a vague "you like this or you don't
8 like this and you're interested in that." I mean, there is
9 some objective evidence in Mr. Sheltra's own words about what
10 he likes and what he wants.

11 MR. KAPLAN: That's if you take his words at face
12 value.

13 THE COURT: Right. And I understand what his
14 explanation was at trial.

15 MR. KAPLAN: On the computer issue, I do understand
16 that the Court on occasion has not applied the two-level
17 enhancement, but as the Court just indicated, the Court may see
18 a distinction between just having pornography -- child
19 pornography on your computer and actually using your computer
20 to solicit illegal activity. But from my perspective, I don't
21 know why it's different to email someone and talk about these
22 subjects than it would be to meet a person -- to meet, you
23 know, in person with someone and carry on the same
24 conversation. I don't see a distinction between the two in
25 terms of the severity of it, why -- why there should be a

1 two-level enhancement for saying to someone on a computer "I'm
2 interested in some sexual activity with you or your daughter"
3 or sees the person and meets the person in person and makes --
4 you know, indicates the same sentiment.

5 THE COURT: I think in the latter case, if they met in
6 person and indicated the same sentiment, there's probably an
7 enhancement for that as well. It's not a computer enhancement,
8 but don't you think that would result in some form of guideline
9 focus on that behavior in addition to possessing child
10 pornography? So if somebody is in possession of child
11 pornography and in addition to that they meet someone in person
12 and actively solicit the production of child pornography, I'm
13 confident that would find its way into a presentence report,
14 and I can't think off the top of my head what the enhancement
15 would be, but my guess is Mr. Bonneville could find it pretty
16 fast.

17 MR. KAPLAN: Well, I wasn't necessarily referring to
18 manufacturing of child pornography or production. I was
19 talking more along the lines of if my client -- if my client
20 uses a computer to solicit sexual activity with someone, I
21 don't see the difference between that and him talking to that
22 person at his home, for example, or on the street or some other
23 place and not through the use of a computer. And I'm sure if
24 there's an enhancement for that, Alexandre will find it. He's
25 usually found all of them in my cases. So I don't see the

1 distinction. And today computers are so common. Everyone uses
2 computers for absolutely everything. It just seems kind of
3 antiquated, I think, to give someone an enhancement for the use
4 of a computer.

5 THE COURT: Would you agree with me that the Second
6 Circuit has approved the use of a computer enhancement in these
7 types of cases?

8 MR. KAPLAN: Yes.

9 THE COURT: Okay.

10 MR. KAPLAN: But I'm also thinking in terms of -- and
11 I will make this argument later when you get to the 3553(a)
12 factors. I think one of the things to look at is, okay, this
13 is what his guideline looks like, but if we don't apply these
14 certain enhancements, which I think may not be fair, then
15 you're looking at a more reasonable sentence than you would be
16 under the federal Sentencing Guidelines, and that's why I raise
17 that issue.

18 THE COURT: So I agree, and I've said it before, that
19 the Court's not making new law. The child pornography
20 guidelines have been criticized by lots of courts, including
21 the Second Circuit.

22 MR. KAPLAN: The one that really bothers me is the
23 issue with the niece. I don't see how an unsupported
24 allegation - I couldn't even do the math. It's over 30 years
25 ago - where the police apparently investigated and decided not

1 to bring charges, no one ever hears anything about it again,
2 all of a sudden it shows up in this case and the Government
3 makes no effort whatsoever to prove it, I don't know why it's
4 okay for that to be in the presentence report, because the
5 obvious conclusion that anyone's going to draw from reading
6 that, if it's just one line, is that it's true and that my
7 client engaged in that type of conduct, and it's totally
8 unsubstantiated, and no one's had the opportunity to -- to
9 provide any evidence with -- I think the Government should have
10 been required to do that if it's going to stay in the
11 presentence report.

12 THE COURT: Well, the Government can establish some
13 things, which is why I suggested that certain paragraphs could
14 remain in the presentence report, because they are uncontested
15 and uncontestable. This person reached out after she heard
16 about Mr. Sheltra's case and made a report, that she explained
17 the dates when it occurred and the fact that she backed off
18 because her family was not supportive, and she provided a date
19 range which would show for some of it Mr. Sheltra was a minor
20 himself and other portions of it he was an adult. And those
21 are things that she said, and it's the fact that a report was
22 made, not the truth of it, that was raised as an issue at
23 trial.

24 MR. KAPLAN: Except, Judge -- were you finished?

25 THE COURT: I was.

1 MR. KAPLAN: Except that it carries more weight than
2 what the Court's implying, I would suggest. I mean, even
3 Probation says, all right, we're going to give a five-level
4 enhancement because there are two offenses that occurred,
5 Count 1 and Count 2, but even if we didn't count one of those,
6 the five-level enhancement would still count because of the
7 conduct with his niece.

8 THE COURT: But the Court doesn't even need the
9 conduct with the niece for the five-level enhancement, so I
10 wasn't planning on relying on it for that purpose.

11 MR. KAPLAN: I wasn't objecting to the -- the way it's
12 being applied, but --

13 THE COURT: So -- so let's drill down on this, because
14 it's an important issue, and I have concerns that we have only
15 reliable evidence at sentencing. And if the Court winnows the
16 facts in the presentence report to a report was made; the woman
17 alleged abuse during these years; this is why it wasn't
18 pursued, according to her report; and these are the ages of the
19 alleged victim and Mr. Sheltra at the time, I think that should
20 be fair game because this person was on a witness list at
21 trial, and I believe she was on the witness list solely because
22 there was a potential that there was going to be a defense that
23 this behavior was caused by a stroke and the Government wanted
24 to establish that it predates the stroke. So what should the
25 Court do with that?

1 MR. KAPLAN: I don't think the Court should include
2 it.

3 THE COURT: Okay.

4 MR. KAPLAN: I mean, it's not fair to say that she
5 dropped it. My understanding is that the police investigated
6 it, that they came, they did an investigation, and decided not
7 to bring charges. That's my understanding. And I don't think
8 just because someone is on the witness list and makes a
9 statement and the defense hasn't, you know, made an effort to
10 go find that person and speak with them or disprove it, my way
11 of thinking always was if you want something like that in the
12 presentence report, then whoever wants it in needs to prove it.

13 THE COURT: So in paragraph 29, it says "V1 reported
14 the sexual abuse she suffered to the police sometime in the
15 1980s. However, she ultimately did not go through with her
16 complaint due to backlash she faced from her family." And
17 you're saying that's factually inaccurate and the law
18 enforcement actually investigated it and decided it wasn't
19 reliable?

20 MR. KAPLAN: I didn't say law enforcement decided it
21 wasn't reliable. My understanding was law enforcement
22 investigated it and didn't bring charges. Now, I don't know if
23 maybe they didn't bring charges because she said, "I don't want
24 to pursue it." That's a possibility. But I just think there's
25 too many questions about this, and reliability hasn't been

1 established. And, I mean, I guess it's somewhat esoteric in
2 the sense it's not affecting his guideline, I don't think.

3 THE COURT: It isn't affecting the guideline, and the
4 Court is aware of the reliability of the details and has raised
5 that as a reason for taking it out of the presentence report.
6 So it isn't going to drive the sentence in this case, but it is
7 a fact that was part of the trial and not something that's
8 coming out for the first time in the presentence report where
9 somebody nobody knew about says, "Hey, I'm also a victim and I
10 want to be in the presentence report." And I kind of want to
11 capture that trial evidence which wasn't presented but the
12 Government made an offer of proof that it was prepared to do
13 so.

14 MR. KAPLAN: There is an argument that it really is
15 coming out for the first time, because even though this person
16 was on the Government's witness list and we had an idea of what
17 she was going to say because we had a police report, she didn't
18 testify. It didn't come out. There wasn't any testimony on
19 it. And in most cases, that's the end of it. It doesn't show
20 up in the presentence report.

21 THE COURT: With the definition of "relevant conduct,"
22 do you agree that there's lots of things that don't come up at
23 trial?

24 MR. KAPLAN: I think if we were going to try and
25 include -- yes, of course. I think if we were going to try and

1 include this as relevant conduct, you'd really focus on the
2 length of time that's elapsed, and I don't think it would come
3 in as relevant conduct in that sense given how long it's been.

4 THE COURT: Okay.

5 MR. KAPLAN: I think -- were those your three issues?

6 THE COURT: Yes, I believe that was.

7 Do you want to talk to me about the 3553(a) factors now in
8 your presentation and then I'll get the Government's full
9 presentation as well?

10 MR. KAPLAN: So I can -- you want me to do everything,
11 then?

12 THE COURT: Yes, please.

13 MR. KAPLAN: I was going to say good afternoon, but I
14 think we're beyond that point.

15 So, Judge, clearly it is a difficult case, right? It's
16 difficult because Mr. Sheltra went to trial; he was convicted.
17 He hasn't admitted guilt, and my understanding is that he has
18 no intention of doing that, which is his right.

19 I also think it's difficult because I'm assuming that the
20 Court, in fashioning a sentence, is going to think of him as an
21 untreated sex offender, which is a consideration, I suppose, in
22 a case like this, someone who's not willing to obtain -- or
23 isn't able to obtain counseling because they won't give it to
24 him since he hasn't admitted.

25 And finally, I think the nature of the offense is

1 disturbing. If you ask most people about it, they would
2 probably suggest, you know, you lock him up and throw the key
3 away because it does have that visceral reaction for people.
4 And I don't think any of us are immune to that.

5 But at the same time, I do think a 10-year mandatory
6 minimum sentence is appropriate. And I base that on a number
7 of factors which I think, individually and in combination,
8 support a 10-year sentence.

9 One is I pointed out in my sentencing memorandum four
10 cases in Vermont which I felt represented serious conduct on
11 the part of the defendant and sort of compared that conduct
12 with my client's conduct. I know that's risky because it can
13 be interpreted on occasion as, like, trying to justify or
14 excuse his behavior. That's not the intent at all. But I do
15 think, and I'll make this point later, that if you're going to
16 be fair -- I mean, not to suggest the Court's not going to be,
17 but I think to be fair in this case, you not only need to look
18 at the crime that he was convicted of but you need to look at
19 the harm that he caused, because, you know, two people can be
20 convicted of the same crime and one is far more egregious than
21 someone else.

22 I also --

23 THE COURT: So let me talk to you about the harm he
24 caused, because that is a difficult subject in this particular
25 case where you have an undercover officer pretending to be a

1 woman who's got a minor child. It's less of an issue with ER,
2 but ER's photos that she sent to Mr. Sheltra were not the kind
3 of photos that we typically see in a child pornography case.
4 They weren't child pornography. He asked for something far
5 more explicit, but -- but this is a case in which Mr. Sheltra
6 was not particularly successful in some of his endeavors. That
7 doesn't mean that he wasn't doing everything he could to be
8 successful.

9 But I was thinking about it in terms of if we have people
10 who are driving while intoxicated and they have the same blood
11 alcohol and the same measure of driving, one of those people
12 may by chance kill somebody and the other person does not, and
13 the same thing with distribution of drugs. One person may have
14 death resulting and the other person does not. And we usually
15 do punish somebody more seriously if there is an actual harm to
16 somebody.

17 In this case there's kind of -- it's a split because we
18 have a live minor victim.

19 MR. KAPLAN: So, Judge, it's interesting. I was
20 actually going to make the same analogy, because when I was
21 looking at this, I remember something Judge Kupersmith said to
22 me, and I don't remember everything he's ever said, but a
23 client was being sentenced for DUI with death resulting, and
24 essentially what he said to my client was exactly what the
25 Court just said: "You know, you didn't intend to go out and

1 kill someone, but you had the same level of alcohol in your
2 system, but you didn't have good luck. You know, you went off
3 the road and your friend died." And so he was -- so you do
4 look at the harm that someone causes as opposed to someone else
5 who may have caused less harm.

6 But with respect to these charges, I thought about that,
7 and it occurs to me there's certainly a harm to society, and I
8 think that might answer your question --

9 THE COURT: But there's also an intended harm. So
10 unlike the drunk driver where he didn't go out intending to
11 kill his friend, if I accept the jury's verdict, which I do,
12 and I see the messages, there was intent to commit very serious
13 acts.

14 MR. KAPLAN: But does a person who intends to commit a
15 serious crime get the same sentence as someone who actually
16 committed it? I mean, if someone attempted to shoot someone
17 but missed them, does he get the same sentence as someone who
18 actually shot someone and killed them? That's -- usually in
19 most cases you don't end up with the same, but it's difficult
20 to compare cases. So I agree. I think there clearly was a
21 harm to society generally, if nothing else.

22 And the other thing I looked at was the federal sentencing
23 guideline statistics, which talk about what an average sentence
24 is. Just looking briefly, your Honor, at the cases that I
25 mentioned, we've already had a discussion about my feeling that

1 it's important not only to look at the crime that someone's
2 been convicted of but also to look at the harm that they've
3 done or actually what it is that they actually did as opposed
4 to the crime they've been convicted of.

5 I think the Nicholas Rodimon case is really a helpful case
6 in determining what is an appropriate sentence. Nicholas was
7 someone who was in his late 20s, early 30s. I don't remember.
8 He had no criminal record. He paid a woman in Romania, a
9 mother, and had her videotape her having sex with her young
10 child. And he did that on several occasions over -- over
11 several months. And his guideline was a level 39, which is the
12 low end of 21 years. And in that case, I mean, he admitted
13 guilt. He pled guilty. But in that case the Government agreed
14 to 114 months.

15 So I draw a couple conclusions from that. One is clearly
16 a life sentence is not appropriate in this kind of a case if
17 Nicholas Rodimon -- if everyone agreed his sentence was a
18 reasonable sentence at 114 months. I also think it supports a
19 sentence of 10 years for the reasons that we just -- reasons
20 based on the conversation we just had, which is in Count 1,
21 there wasn't any harm that was done to anyone other than to
22 society. There was an intended harm, but it didn't occur.

23 Count 2, obviously, as the Court's indicated, that's more
24 problematic, but what that involved was the allegation that my
25 client asked for certain pictures, which he didn't receive, and

1 there was an --

2 THE COURT: Is that not Count 3?

3 MR. KAPLAN: Well, Count 3 was where he asked for
4 pictures. That's right.

5 THE COURT: Yup.

6 MR. KAPLAN: But I think Count 2, there was an
7 allegation that he actually touched this young woman,
8 15-year-old girl, above her clothing on one occasion, and I
9 wouldn't begin to minimize that, and I wouldn't begin to
10 suggest that wouldn't have a long-term effect on a young
11 person. But does it compare to what Nicholas Rodimon did? I
12 don't think so. And maybe it's not reasonable to compare harm
13 like that, but I do think -- I think the Court should spend
14 some time thinking about the actual harm that was done by Mr.
15 Sheltra.

16 The Brian Folks case is another one. Brian was convicted
17 of a 10-year mandatory minimum in a drug conspiracy and
18 convicted of numerous sex trafficking charges. There was some
19 very graphic testimony about a sexual assault that occurred,
20 about physical and mental abuse with a number of young women
21 over a three- or four-year period. He had a criminal record.
22 He had served 14 years for manslaughter, and his -- and he went
23 to trial, hasn't admitted guilt, and his sentence was 22 years.
24 So I use that as an example to sort of point out why, at least
25 in the District of Vermont, I think a 10-year -- a life

1 sentence that the guideline recommends is not appropriate. And
2 again, looking at the harm, seems to me that a 10-year sentence
3 in this case in comparison is not an unreasonable approach.

4 I also suggested that it would be appropriate to look at
5 the federal sentencing guideline statistics, and just to make a
6 long story short, those suggest to me that the average sentence
7 in these cases, sexual abuse cases, is between 15 and 16.7
8 years, and for people who are in a criminal history category I,
9 it's, you know, between 15 and 16 years. It wasn't a huge
10 sample. It was, like, over 800 individuals, I guess, whose
11 cases they looked at. But I think you can draw certain
12 conclusions from that. If the average sentence is 15 to 16
13 years, you have to assume there are some people whose
14 activities that they were convicted of were more serious than
15 what my client did and maybe some that were just as serious or
16 less serious. But I would assume it ran the gamut.

17 And the question that I have is: Why is Mr. Sheltra's
18 guideline so high compared to the average guideline, the
19 average sentence? And what I have concluded is it's that
20 eight-level enhancement under 2G1.3(a)(3). If you take away
21 that eight-level enhancement -- he was at a level 43. You take
22 away eight levels for that enhancement, now he's at a level 35,
23 criminal history category I, and all of a sudden his low end of
24 the guideline is 14 years.

25 So that's why when I was talking to the Court earlier

1 about, well, it may be the guideline is accurate as applied,
2 but when you start looking at the 3553(a) factors, maybe that's
3 one consideration the Court might look at and say, "I don't
4 think it's appropriate to increase his guideline by eight." I
5 mean, that's a huge increase. I don't understand the rationale
6 for such a large increase.

7 It occurs to me that there very well could be someone who
8 was convicted in that 15-to-16-year range who maybe the victim
9 in their cases were 12 years old and there's others whose
10 victims were 11-1/2 years old and the difference between the
11 two would be an eight-year *[sic]* enhancement. And it seems to
12 me that that's just not reasonable. And particularly in a case
13 like this where -- I guess we're getting back to what the
14 intended harm was.

15 The only reason the alleged victim in this case was nine
16 years old is because that's what the undercover agent said. If
17 the undercover agent had said she was 12, then he wouldn't be
18 getting that eight-level enhancement. And if my client was
19 interested -- well, I'm not going to -- I'm just saying it
20 seems particularly unfair in this case since there really
21 wasn't a 9-year-old, and I know the Court's thinking about --
22 well, I'm not suggesting what the Court's thinking about, but
23 someone might think about the fact that he still intended to do
24 it.

25 THE COURT: Knowing she was nine.

1 MR. KAPLAN: Yes. But, you know, if the Court starts
2 looking at the 3553(a) factors and takes away that eight
3 levels, all of a sudden we're down to what the average sentence
4 is, even a little bit below it. So if you look at Nicholas
5 Rodimon at 11 years and the average at 15 to 16 years and if
6 you take away the eight-level enhancement, now we're at 14
7 years. You're looking at a sentence someplace, I think,
8 between 11 and 15 years, which would be far more reasonable
9 than the life sentence that -- particularly given my client's
10 age. You know, he's going to be 60 in the spring. If he gets
11 a 15-year sentence, he'll be in -- most likely in his early 70s
12 before he's released. So it seems to me that taking a look at
13 the average sentence in these cases should be a helpful
14 starting point.

15 I'm assuming that the issues that the Court's concerned
16 about in terms of sentence is punishment and maybe protecting
17 the public in a case like this where the defendant hasn't
18 admitted guilt. I don't think -- I don't think a sentence of
19 10 years is a short sentence. I don't think it's a slap on the
20 wrist for someone my client's age who's never been in jail
21 before and all of a sudden has been in jail now for over three
22 years. He's been punished in a number of different ways. He's
23 lost everything. He had a wonderful reputation. He had a
24 house. He had a car. He had a bank account. Everything's
25 gone. He has nothing left in that respect. He's also lost the

1 respect of people that have known him.

2 When he's released eventually, if he makes it through,
3 he's going to essentially be -- I assume his daughter may help
4 him, but he'll have nothing. I think that's all a significant
5 punishment.

6 And in terms of protecting the public, when he gets out,
7 he's going to be on supervised release, I assume for quite a
8 while, and Probation's going to have a lot of control over what
9 he does or doesn't do. I think Probation has the ability to
10 protect the public from anything that my client might think
11 about doing, if he's still so inclined to do that, and so I
12 think a 10-year sentence does provide -- keeps him off the
13 street for 10 years, and then a long time on supervised release
14 also protects the public.

15 And I think if you use 14 or 15 years as the starting
16 point, it should be reduced a little bit by his history. I
17 mean, he worked for over 30 years for IBM. He was a
18 supervisor. He was extremely well respected by the people that
19 worked with him. He was very successful. He made a good
20 living. And so I think it's appropriate to give him some
21 consideration because of that.

22 Thank you, Judge.

23 THE COURT: All right. Thank you.

24 Mr. Sheltra, do you want to make a statement on your own
25 behalf?

1 THE DEFENDANT: I certainly support what Mr. Kaplan
2 said, and I appreciate all the work he went through to do the
3 behind-the-scenes analysis of similar cases and all that. That
4 was a very extensive endeavor on his part.

5 And I would like to thank the Court when my other attorney
6 had to -- had a conflict of interest. I would like to thank
7 the judge for appointing Mr. Kaplan. It took a couple years to
8 go over before I could actually get the evidence that was --
9 that I sought that seemed more relevant than anything else in
10 this case in front of him, and it definitely made the
11 difference for me.

12 This has been a very challenging time throughout this
13 whole thing. As I said in the letter that turned into a motion
14 on August 10th of 2020, your Honor, that turned into that
15 motion that we had, my actions have been gravely misunderstood,
16 and that is still the case.

17 I understand the -- what I've been convicted of, but that
18 was not my intent. This has been a long, challenging time for
19 me with Mr. Kaplan because there were so many months in that
20 time frame, just about two and a half years, actually, before I
21 could talk to him about what I was trying to convey to him, and
22 that makes it very difficult, especially in these
23 circumstances.

24 The sensitivity of this information is such that I can't
25 build a case where I am. I can't sit and look over my

1 materials. It would result in -- my life would be -- is in
2 danger every day because of my charges, and so there's just no
3 way to have that material on hand, and so that in itself has
4 been extremely difficult, and so Mr. Kaplan has been able to
5 sort through that, and the first time that he said, "I see now,
6 I don't think you're guilty," that was -- that was the most
7 relieving point in my life, in reality, and that happened in
8 October of this past -- this past year, just when we were
9 starting the whole trial thing, and I had somebody who finally
10 read the material enough to understand that you can commit
11 things via email.

12 And the thing that -- I don't want to go back and -- I've
13 been convicted, so I understand, and I'm not trying to waste
14 your time, your Honor, but the fact that I did not solicit
15 anything from an undercover person, this was information that I
16 received from someone else that I was reacting to, and I
17 understand that that doesn't make it right, and it doesn't make
18 it right, but when you combine that with me asking if they're
19 undercover, the other side of this whole thing is, yes, I
20 understand the prosecution's jumping on that and saying, "Well,
21 yeah, he just wanted to make sure he could get away with
22 something because he wanted to know if this was a law
23 enforcement individual that he was talking to."

24 I have 23 years of management experience where I'm dealing
25 with interactions with people all the time, your Honor, and so

1 when I asked that question, if they were undercover, then it
2 allowed me to understand that, no, this is a troubled person.
3 This is somebody who's react- -- who is presenting me with
4 information or with an opportunity, and they're sincere about
5 it, and I truly believed that if you asked someone that was
6 undercover, I thought they had to tell you that. That's a
7 naive thing, but I had never been in trouble.

8 So there are a couple things that are stupid like that,
9 but if I was able to put everything into a chronology and look
10 through my own computer records with -- with an attorney, we
11 would have had a different case, and we just weren't able to do
12 that. Everything that we had for evidence was presented by the
13 prosecution, and so it was very reactionary and was never
14 proactive, because everything about my philosophy in this
15 situation changed when that information was presented to me,
16 and if -- no one can sit and listen to somebody who is offering
17 their child up for sexual activity and not -- not have some
18 reaction, dramatic reaction, to that, and so that's where
19 everything came from with the two charges.

20 I don't know anything about what happened other than --
21 with my niece 35 years ago or whenever it was, but I do know
22 the state police came to my house and we had an interaction and
23 I gave them input, and it basically went away from there, okay?
24 So that aside, talking about the charges that are -- that I was
25 accused of and that were deliberated on by the jury, those

1 cases, this -- this plays a key role in that.

2 And so to wrap this up, which Mr. Kaplan likes me to do,
3 is that the -- what I've been convicted of was not my intent,
4 and it's the same thing that I said to you in that letter from
5 August 10th, your Honor. My actions have been gravely
6 misunderstood, and I know the things that I did, and when I was
7 just listening to Mr. Kaplan talk about the person from
8 Plattsburgh that we were interacting with, nobody wants to talk
9 about the fact that, well, she had volunteered the information,
10 and I was trying to understand. I was -- I was on an
11 information mission, and -- because that's just my personality.
12 If I don't know something about something, I want to go find
13 out about it.

14 And I could have done things a whole lot different. I
15 regret the way that things happened. I sincerely regret the
16 fact that I mistook Treena and -- but that -- my stroke does
17 come into play with that, because as I read -- I read all the
18 time in my cell, your Honor, and I am struggling with that, and
19 it's going to be, I guess, that way for the rest of my life.
20 Because if I imagine something or if I -- something else pops
21 into my head, that's the word I see, and that's where the
22 Treena thing came from, and the fact that ER was talking about
23 anal, that was -- it was on my mind with -- about Treena, and
24 that's where it went, and I understand that there's a
25 discrepancy there, but the theme is the same. The theme was,

1 you know, a sexual theme, and so that was something that Treena
2 and I had -- were engaging in on a regular basis, and it just
3 came into play that way.

4 But thank you very much for appointing Mr. Kaplan. This
5 has been a very long and tenuous process, and I wouldn't wish
6 it on anyone with the circumstances that I'm in in this
7 environment. But he has made the best of it. Especially in
8 the last 6, 8, 10 months, 12 months, we've worked together
9 extremely well. I really appreciate that. As I said, the
10 things that I'm convicted of, that was not my intent.

11 THE COURT: All right. Thank you.

12 THE DEFENDANT: If I could just --

13 THE COURT: Go ahead.

14 THE DEFENDANT: -- add, I know that because I am
15 not -- I have an issue with that my only two options are to lie
16 to you and say that I'm guilty of these things, because that
17 was not my intent, and receive the treatment that would allow
18 me to have a better -- a better recovery from this nightmare or
19 tell you the truth and feel the brunt of everything, the wrath
20 of justice that is under -- you know, is now on me because I'm
21 not lying to you. Do you understand what I'm saying?

22 THE COURT: I do understand.

23 THE DEFENDANT: If I were to say -- I mean, I could
24 have come and said, "Hey, I really screwed up, I'm guilty as
25 hell and I'm terribly sorry for it." But that would have

1 been -- that would have been perjury, and I would not do that,
2 your Honor.

3 THE COURT: Okay. Thank you.

4 Let's hear from the prosecutor.

5 MS. MASTERSON: Thank you, your Honor.

6 To begin, your Honor, it's startling to hear what Mr.
7 Sheltra had to say, because he obstructed justice again. He's
8 holding on to the lie about Treena; he characterized the
9 undercover as being the aggressor, she was saying things and he
10 was responding; he was on an information mission. That's not
11 true.

12 The Court heard all the communications between the
13 undercover and Mr. Sheltra. The undercover was very restrained
14 in her actions. "What do you mean? Tell me about this." It
15 started with her saying, "I have a 10-year-old daughter. Maybe
16 we have something in common." And he took it right down the
17 information superhighway to talking about sex with her child.
18 So that's Mr. Sheltra again.

19 And he asked when somebody's offering up their child for
20 sex, somebody's going to have a reaction. I personally would
21 call the police. He engaged in aggressive sexual chatter with
22 that mother about sex with a child because that's where his
23 interests lay.

24 His actions he says were gravely misconstrued. Mr.
25 Sheltra got due process. He got a trial. He got to pick his

1 jury. He got all the Government's discovery. He had extremely
2 competent counsel, a fair judge, fair prosecutors, and the jury
3 that listened to every word and hung in there even during our
4 COVID vacation, and he got the verdict that the evidence
5 supported. So this is a continuation -- his comments are a
6 continuation of the misrepresentations that he has engaged in
7 for a good long time.

8 I want to start my comments by talking -- responding to
9 the Court's specific inquiries. With respect to Victim 1, we
10 agree that the way that the Court has proposed addressing her
11 disclosures in the PSR is appropriate. We talked to her and
12 asked her if she wanted to come in to testify to provide the
13 Court with live testimony and subject to cross-examination, and
14 she declined and said, "It wouldn't be good for me," and we
15 said fine, we'll go without it, which is why we withdrew that
16 in support of the five-level enhancement under 4B1.5 and
17 chose -- in filing her written statement, we didn't file it in
18 support of the PSR. We narrowed the Court's -- or asked the
19 Court to consider what she wrote in connection with Mr.
20 Sheltra's history and characteristics. That is the nature of
21 the offer and why we are comfortable about having her here. So
22 I think the way the Court has resolved to address all these
23 issues is appropriate.

24 With respect to the computer enhancement, we -- you and I
25 have had quite a long discussion over the years about child

1 pornography cases, and I understand the Court's thinking, and I
2 appreciate that the Court has drawn a very clear and purposeful
3 distinction when it applies. There's a difference, I
4 recognize, between a person who's sitting at home and
5 downloading child pornography through a peer-to-peer network,
6 because that's generally how those people get it, but Mr.
7 Sheltra's conduct was way different than that. He was actively
8 trolling for people on the Internet. He launched a number of
9 Craigslist posts, and then he used the Internet to continue
10 communicating with those victims, and we've got three that he
11 was communicating with.

12 THE COURT: What about Mr. Kaplan's point of, well,
13 why is it worse to do that online than in person?

14 MS. MASTERSON: Because you can lie about who you are.
15 You don't get Randy Sheltra, bald 57 -- or now 59-year-old man.
16 I mean, yes, he did -- would send a picture every so often,
17 along with pictures of his penis, but he could maintain a level
18 of anonymity and a level of aggression that you can -- you can
19 continue to pursue when there's nobody there startling -- being
20 startled, being offended, or anything, you're just doing it by
21 yourself and nobody knows who you are.

22 And it's that level of anonymity, that level of easy
23 accessibility to the conduct that makes the use of a computer
24 particularly insidious. Because when is he going to have an
25 opportunity? How is it going to come up when you can start

1 talking to somebody about having sex with her 10-year-old
2 daughter? That doesn't come up, at least in my experience, in
3 ordinary conversation. But you can find that communication
4 when you're looking for it, and we know that's exactly what Mr.
5 Sheltra did.

6 And so that's why I think that the use of the computer
7 enhancement is appropriate in light of the Court's comments,
8 particularly when we realize that at the end of his sur cross
9 at trial, the last questions that I asked him were, "So you
10 engaged in sex talks with the undercover about her 10-year-old
11 daughter?" He admitted to that. He admitted to talking to
12 Alisha with an A about sex with her 9-year-old daughter,
13 admitted that, and then pointed out, which I was surprised
14 with, that he engaged in sex talk with the person in
15 Plattsburgh that he was bragging to about the communication
16 with the 15-year-old that he wanted -- he was involved in
17 sexual chatter with her about sex with a child as well. He
18 found three people. His use of the computer was -- there was
19 no good associated with that activity. It was all bad. And
20 so -- and he made -- the computer enabled him to do that with
21 abandon, so we agree that the computer enhancement needs to
22 apply.

23 With respect to obstruction, the Court sees the Treena
24 exchange the way that we do, that -- I mean, let's go to the
25 law on the obstruction enhancement. It has to be -- sorry.

1 I've got good notes. Let me get it.

2 THE COURT: It has to be willful --

3 MS. MASTERSON: Material.

4 THE COURT: -- material, commit perjury, which is the
5 intentionally giving of false testimony as to a material
6 matter.

7 MS. MASTERSON: Yes. The Court has it. And that is
8 exactly what his statement with respect to the anal sex trigger
9 with -- or the testimony that he was triggered by the
10 15-year-old's reference to anal sex with her boyfriend, because
11 we know that the actual communication where he first asked the
12 15-year-old happened 90 minutes before that triggering event
13 that he very carefully assented to during cross-examination.
14 That was not true because it was objectively discounted by the
15 raw fact of the time difference, that the triggering event
16 happened after his first request.

17 So it was willful to try to avoid the implications of
18 having made that request; it was false because it was -- it was
19 discounted by what was written on the text; and it absolutely
20 was material, because if the jury had believed that Mr. Sheltra
21 thought he was asking somebody different for pictures of her
22 genitalia, he would have been acquitted on Count 3. So this
23 was absolutely material to the jury's decision-making because,
24 if believed, he would have been acquitted of Count 2.

25 Similarly, and this came up when I was studying the

1 defense's sentencing memo -- I'm sorry. At the beginning of
2 the hearing, I didn't hear that the Court had -- when it went
3 through all of the materials that it has reviewed, I assume the
4 Court has read our paperwork as well.

5 THE COURT: Oh, yes.

6 MS. MASTERSON: Okay. It just -- that wasn't in the
7 list.

8 THE COURT: Oh, I thought I said I had reviewed your
9 sentencing memoranda, but if I didn't, I have.

10 MS. MASTERSON: Of course. I figured that. But when
11 I was reviewing the defense, another material lie came up,
12 because Mr. Sheltra claimed that he did not meet with the
13 15-year-old for sex in the car when he drove the day after they
14 met. The Court obviously remembers that he bragged about
15 meeting with the 15-year-old in the emails to Person 1. The
16 15-year-old provided a statement that's in the PSR that
17 describes what actually happened, which refers to touching. In
18 the defense sentencing memorandum, they admit it, that he
19 touched her in -- when they were in the car together.

20 At trial, in response to the question from Mr. Kaplan,
21 when they're talking about his communications with the
22 15-year-old, Mr. Kaplan said, "Okay. Did you actually" -- and
23 this is on page 427 of the trial testimony that was given on
24 November 11th *[sic]*.

25 "Okay. Did you actually -- when you met, did you actually

1 have physical contact with her?

2 "I just met her in my car. We -- I never touched her."

3 That was false. If believed -- so that was false. It was
4 willfully given while he's at trial trying to save himself, and
5 it absolutely was material as well because, if believed, then
6 that would have bolstered his other testimony that he didn't
7 have a sexual interest in children because he's testifying "I
8 had the opportunity with the 15-year-old and I never touched
9 her," and that was a lie.

10 If it had been believed by the jury, it would have been
11 material and it could have led to an acquittal on either
12 Count 1 or Count 2 because it would have bolstered the overall
13 representation that he didn't have a sexual interest in
14 children.

15 So with respect to the obstruction-of-justice enhancement,
16 we have two specific lies that were willful -- willful and
17 material and false. So -- and that is in addition to the
18 larger ones that we've talked about where he falsely testified
19 that he didn't have a sexual interest in children. I would
20 suggest that the safer way to -- if the Court is going to find
21 that an obstruction-of-justice enhancement applies, then the
22 better way is to link it to either or both, preferably both, of
23 these material false statements, so I assume that a court will
24 later review it and the court will know exactly what it is that
25 the Court found, but there was obstruction. No question about

1 it. I think I've answered -- addressed the Court's questions.

2 All right. If I may, I have thoughts on other matters
3 before the Court that were raised by counsel.

4 To begin, Mr. Kaplan mentioned the four other cases. I
5 submit to the Court that the only one that has any potential
6 relevance is the Nicholas Rodimon case, which, conveniently,
7 the three of us handled together. In that case, the Court will
8 recall -- I mean, because, you know, Folks, Monroe, and
9 Caraballo all were dealing with drug offenses, violent crimes,
10 and adult victims, not children. Rodimon had a child victim,
11 and so that's where he has relevance in this case, because
12 we're dealing with that genre of crime against -- or crime, not
13 the drug-motivated. It has a completely different mind-set.

14 But Mr. Rodimon, I mean, as the Court knows, he pleaded
15 guilty, so he got acceptance of responsibility. He didn't
16 provide any false testimony. He got the same sentence that the
17 woman got in Romania. This was recommended to the Court, and
18 the Court agreed. And the Court will recall that Mr. Rodimon
19 thought that he was in an emotional relationship with that
20 woman, and she was involved in a money-making venture. He
21 thought that there was something going on. And so there was a
22 much different confluence of factors that led the Government to
23 believe that this was a more -- that this would be an
24 appropriate resolution. Counsel agreed, and obviously the
25 Court agreed.

1 The difference here is Mr. Sheltra, he went to trial; he
2 provided false testimony; he continues to deny his guilt. And
3 the sentence that counsel is asking for is a mere 6 months
4 greater than what Mr. Rodimon got under wildly different
5 circumstances. We submit to the Court that this -- that it's
6 apples and oranges in trying to equate how Mr. Sheltra presents
7 to the Court and what -- how Nicholas Rodimon presented to the
8 Court.

9 Talking about the actual and intended harm that were
10 caused by the defendant, we dis- -- we agree that there was
11 harm to society by his conduct. And with respect to whether
12 there was an actual victim in Count 1, thank God there wasn't,
13 but he showed up to have sex with who he thought and hoped was
14 a 10-year-old and her daughter [sic], okay? So but for the
15 grace of God, he's now a child physical rapist. And let's not
16 forget as well that in his quest to have sex with Maddie, the
17 daughter of Momma.mego, or Meg, they came together because he
18 was looking for Alisha, the mother of a 9-year-old, and the
19 Court will recall his testimony when Mr. Sheltra testified that
20 he wasn't going to let Meg go. He wasn't going to make the
21 same mistakes that he made with Alisha because Alisha with an A
22 left and he was -- still a year later, he was still desperate
23 to get together and make it all happen.

24 So now we've got two little, tiny girls, 9 and 10 years
25 old, that he is desperate to have sex with, all right? So, you

1 know, but for the grace of God, that didn't happen.

2 And also, let's not forget that he was communicating with
3 the Plattsburgh woman about sex with a child. So now we've got
4 three.

5 So there is no actual harm, but there's plenty of intended
6 harm. And let's not forget the fact -- so he's talking to
7 these three people. One we know is an undercover. So she's
8 not going to be swayed by him. When he's trying to normalize
9 this conduct, she's going to realize that this is crazy talk.
10 But he's normalizing that behavior, that deviant sexual
11 behavior, and making it okay for at least two other people that
12 we know of: Plattsburgh lady and Alisha with an A.

13 So that's how this conduct happens is people get on the
14 Internet and they find their support group, they find their
15 tribe. He found three other people to talk to about sex with
16 kids. They find each other, and then they work and they talk
17 and they make it okay for each other to commit these crimes.
18 And so that is a particularly insidious harm caused by Mr.
19 Sheltra's conduct, because he's normalizing it, and now people
20 on the receiving end of that communication think, oh, good,
21 we've got a friend over here, and they will talk to other
22 people, continue to normalize it, because now they've been
23 bolstered, or they might act on it, and we don't know. So
24 that's another horrible harm that was caused by Mr. Sheltra.

25 As to Count 2, that was a real kid. He absolutely hurt

1 her. He admitted in his sentencing memo that he did meet her
2 and touch her, though it was over the clothes. Well, we know
3 what happened based on what was written in the email to
4 Plattsburgh lady and in ER's statement. But let's remember how
5 the 15-year-old presented. In the very first email, she
6 responds to Mr. Sheltra's Craigslist post that said "Older Man
7 Seeking Younger Woman." She announces that she's into, like,
8 puppies or something like that and has a very high libido.
9 That's a gold mine for Mr. Sheltra.

10 Some people might think that a child who presents at 15
11 and announces she has a very high libido, that she's troubled,
12 there's something going on that is horrible with this child
13 that she is talking with men on the Internet about sex and
14 suggesting that they get together at midnight. But that's not
15 how Mr. Sheltra responded. He was ready to jump in his car and
16 drive an hour and a half to Orange to meet with her for sexual
17 activity.

18 And then -- so -- and then he did meet with her the next
19 day. And remember how concerned he was: "Is your dad going to
20 be around?" He had asked her, "Are you a cop?" And she's
21 like, "No, I'm a kid," because she was, and then he's like,
22 "Who's going to be home? Is there a place where we can meet?
23 I don't want anybody to find us." His intentions were obvious
24 when he went there, and then he acted on them. He did go. He
25 did meet with her.

1 And even though he testified falsely at trial that he
2 didn't touch her, he did. That's absolutely true. And what
3 does that do to a 15-year-old kid that a 55-year-old man is
4 willing to jump in the car and meet her for sexual activity?
5 And she had a boyfriend also, so that's kind of an uncool part
6 of it. But still, he jumps in the car and makes his way over
7 there to sexually assault her. He didn't rape her. We don't
8 believe that he raped her based on the disclosures that were
9 made. But he still did that, and it's a gross overstep.

10 And, you know, I said in my closing argument she didn't
11 need a boyfriend. She didn't need a lover. She needed a
12 grown-up. And Randy Sheltra was none of that. He was a sexual
13 predator taking advantage of a vulnerable person. And he
14 even -- I asked him on cross, "So when you showed up for sex --
15 sexual activity with her, was that part of the mentoring and
16 comfort that you were going to provide to this troubled child?"
17 And he kind of hemmed and hawed, but, I mean, there's no
18 escaping that the reason why he was engaged in these
19 conversations, he didn't care about her. He just wanted to
20 have had her sexually. That's the truth about Randy Sheltra.
21 And that's the harm that he caused to her is that he was more
22 than happy and willing to use her like that.

23 Similarly, the Count 3, even asking the questions to the
24 child "Will you send me a picture of your pussy lips," "I want
25 to see a picture of your labia," he's asking -- first off, he's

1 victimizing her, right, by even asking her to send to him these
2 intimate photos; he's asking her to sexually exploit herself to
3 him, this random guy that she met on the Internet; and she's --
4 and he's teaching her by that that she's just a sex object. I
5 mean, to him she clearly was. That's all -- that's how they
6 started and finished the relationship. And asking her those --
7 there's only one part of her body that he really cared about
8 from her, and that was her labia because that was his thing,
9 and those were the requests that he asked.

10 And so the damage to her psyche by having that sort of
11 aggressive, dehumanizing activity by this person who testified
12 that he cared, but we know that was more falsehood, is -- it's
13 upsetting.

14 And there was also -- when he asked her for these
15 pictures, there was no representation "And I won't give them to
16 anybody." We know that he was more than happy to brag about
17 his conquest with her to people because he was bragging about
18 her to the person in Plattsburgh. So if he was able to get her
19 to exploit herself and he gets these images, what's he going to
20 do with them? He's certainly going to tell Plattsburgh lady
21 that he got these images: This 15-year-old hot little kid sent
22 me these things. He wanted it to masturbate to it. That's
23 what he wanted. She was just a sex object. And that
24 dehumanizing for a child in that circumstance is damaging.

25 In the defense paper, their sentencing memo, they object

1 and ask for a sentence that's not a *de facto* life sentence
2 because of Mr. Sheltra's age because he'll turn 60 next March,
3 and we submit to the Court that the only relevance of Mr.
4 Sheltra's age is what -- how does it relate to the degree of
5 danger that he will pose when he gets released. He poses the
6 same danger now that he did at the time of his arrest, because
7 he's still not being truthful about his conduct; he has no
8 insight into what he did; he has no remorse whatsoever. He's
9 still talking about how the undercover was the aggressor, which
10 we know is nonsense. He has no remorse, completely
11 unrepentant, and his sexual interest in children is obvious.
12 That's where his danger is so keen and acute.

13 And there was one moment in the trial that the Court
14 probably remembers where it just -- it came out, because he's
15 testifying, "Oh, I don't have this interest in children and,
16 you know, I was there to counsel the 15-year-old" and that sort
17 of thing, but when I was asking him to go through the emails
18 that he sent to Plattsburgh lady, you know, and I broke it up
19 individually and is this true, is this true, is this true, and
20 we got to the part where on the second email, he confirmed that
21 he wrote, "She's got an amazing little body."

22 And I said that "You wrote that and that was true, right?"
23 And he said, "Yeah," and added, on his own, "She was adorable."
24 That was amazing, because he couldn't keep it in. It came out
25 no matter what. He's testifying as a defendant while in

1 custody in a federal criminal trial, and that was the most
2 truthful thing he said in his testimony, because his sexual
3 interest, he couldn't even contain it at the moment when the
4 jury probably didn't need to hear that under these
5 circumstances he still thought she was adorable. And that
6 exchange, in the Government's view, defines who Mr. Sheltra is.
7 It really -- that's really all we need to know about Mr.
8 Sheltra is that answer. And that defines and exposes him for
9 the risk that he presents.

10 So we submit that the Court needs to -- and I know the
11 Court will, in fashioning the appropriate sentence, needs to
12 factor in that this is who he is, and he's not going to change.
13 And his age is not relevant to whether he's going to age out of
14 this conduct. The Court knows certainly that these are not --
15 people don't age out of having a sexual interest in children.
16 It persists because it's not really sex. I mean, it is -- it
17 is married with a sex act and a sexual release, but this is
18 power, control, domination, and the special one that Mr.
19 Sheltra added was manipulation, because he worked so hard to
20 groom his victims.

21 I mean, he was working Momma.mego, the undercover, and
22 telling her, like, things to do and "It's all going to be fine"
23 and "Don't worry; she's going to -- we'll get Maddie to orgasm,
24 and I Googled whether a 10-year-old can reach orgasm, and
25 she'll do it so it's going to be pleasurable." So he's -- he's

1 manipulating. This isn't going to go away.

2 And another -- and a big problem with this is he's not
3 interested in getting treatment. He won't be receptive to
4 treatment because he's still denying that it all exists.
5 That's the problem. Mr. Kaplan pointed out, you know,
6 untreated sex offender. That's exactly what he is, and as he
7 presents right now, including what he just told the Court, he's
8 not going to change, and that is scary, because the risk that
9 he poses is horrible.

10 We already have him doing the offense conduct that he was
11 convicted of. That has got to be something that -- that
12 factors in not because, oh, poor guy doesn't have a lot to
13 live. No, he's got plenty of time to live, but what's he going
14 to do and where is he going to be for the rest of his life, and
15 how can we address -- how can the Court address the risk that
16 he poses and keep the community safe? That's the question.
17 Because his age doesn't do anything -- or the Government
18 submits that it shouldn't be any reason for mitigation because
19 he just poses that risk.

20 With respect to the guideline statistics, there are so
21 many holes and unanswered questions with respect to that. The
22 attachments that Mr. Kaplan brought forth, they -- we don't
23 really get much help with that because there's no information
24 in those raw statistics about, you know, what was the offense
25 conduct; did the person go to trial; did they commit perjury;

1 were there multiple victims; what were the charges? It just
2 says child pornography. Was it possession? Receipt?
3 Distribution? Production? Any mandatory minimums?

4 I mean, there are so many unknowns that -- I appreciate
5 that they came forward, and, you know, frankly, 15 to 16-1/2
6 years, that's about -- or the Government's recommendation is a
7 sentence of at least 200 months, which is about in the middle,
8 but, you know, the more I've been thinking about it, the more I
9 think that that might be low, particularly after the comments
10 that he made today which solidify, in the Government's view,
11 that Mr. Sheltra is not going to take any steps -- not capable
12 of taking any steps to change his ways.

13 With respect to the objections that the defense raised to
14 the presentence report, first off, they objected to any fact
15 that suggested he's guilty. Well, that's a problem, because
16 the jury found beyond a reasonable doubt that everything --
17 that he committed these crimes, so they pretty much come in.
18 And moreover, the Court was there when I cross-examined him,
19 and he agreed to just about everything except whether he had
20 the specific intent, so it's inappropriate, I think, to launch
21 a blanket objection like that when his client admitted to 90
22 percent of it, probably 95 percent of it. And the 5 percent
23 that he didn't agree to the jury rejected in its verdict and in
24 finding him guilty, it rejected the Treena story, and it
25 rejected the lie that he never touched the 15-year-old.

1 I've already addressed the obstruction enhancement and
2 also the issues with the niece, so I'll move on to the 3553(a)
3 factors.

4 As to the offense conduct and the seriousness of the
5 offense, I mean, the Court knows it is absolutely horrible
6 conduct. I mean, the man showed up to have sex with a
7 10-year-old, and then we found out that he had had sexual
8 activity with a 15-year-old that he met on the Internet. This
9 is danger -- and was asking her for child pornography. This is
10 horrible, horrible victimization of children and manipulation
11 of the -- of both of them.

12 I mean, in my closing argument, I detailed exhaustively
13 and probably a little too much the grooming process that he
14 engaged in in all of the -- in his communications. I mean, it
15 was like a textbook example of how to groom somebody, you know,
16 kind of teasing a little bit and make sure that the person
17 isn't -- isn't a cop and, you know, it's going to be okay; I
18 mean, what I've just mentioned about, you know, Googling
19 "orgasm" to tell Momma.mego that her daughter's rape would be
20 potentially pleasurable if she could achieve orgasm under those
21 circumstances. I mean, this is dangerous behavior and horrible
22 behavior.

23 Mr. Sheltra's history and characteristics. You know, it's
24 interesting. He makes a point of articulating that he was a
25 good employee with a good work history, 30 years, well

1 respected. Well, I have to wonder how it is that IBM and
2 GlobalFoundries would have responded if they knew, and the
3 Court will recall this testimony, that a lot of the
4 communications that he wrote with the undercover, he did it
5 while he was at work. So he's talking to somebody about sex
6 with a 10-year-old while he's at work? I imagine that he would
7 not have been an employee at those places if they knew the
8 truth about him. The truth was revealed when he was arrested
9 and through the course of this proceeding, but it's a big
10 question as to whether that is actually -- if they had known
11 the truth about him, would he be well respected.

12 As to the punishment, look, he altered the course of the
13 15-year-old's life. He altered the course of the lives of the
14 other people that he communicated with. Particularly, though,
15 I'll focus in on the 15-year-old. I mean, when he is having
16 these chats and victimizing her and asking her to exploit
17 herself and manipulating her and he manipulated the
18 undercover - thankfully she was an undercover, not a real
19 mother - I mean, this is bad stuff, and then to show up to have
20 sex with a 10-year-old? He needs to be punished for what he
21 did to the 15-year-old and what he would have done but for the
22 fact that it was an undercover. This is outrageous conduct and
23 deserving of a significant sentence.

24 Again, as to protecting the public, I've already mentioned
25 that he is untreated, unrepentant, unremorseful child sex

1 predator, and it's not a question of if he will reoffend. It's
2 when. Because he's not capable of accepting any treatment,
3 assuming the treatment even works. But he's -- the public is
4 at great risk of him, and he doesn't appear interested or
5 willing to accept the truth about who he is and then take steps
6 to try and mitigate the harm that he presents.

7 Mr. Sheltra asked the Court to say, well, no, give him 10
8 years and it's okay because he'll be on supervised release.
9 Well, that is -- that's a horrible suggestion because he's not
10 the only person that the Probation Office will supervise, and
11 they have -- you know, they're outstanding in the Probation
12 Department, but he's not the only one, and these guys reoffend
13 constantly. I mean, the Court and counsel, we're all well
14 aware that these guys come back, they find a phone, and then
15 they get arrested with a phone, and then we find bad things on
16 it.

17 It is -- it's just then a question of time, because if
18 it's easy -- on these things it's not like we can drug test him
19 and find out if he is, you know, using drugs or whatever.
20 There is the polygraph that is a tool that's used in connection
21 with sex offender treatment, but these guys violate, and even
22 if he is out, though, and appears to be not violating, it's
23 hard to know if he is or is not. And if he is, the problem is
24 the danger that will happen if he does violate.

25 The issue of deterrence is one that is a big one, I think,

1 in this case, general and specific. I mean, general because
2 you don't get to show up to have sex with a 10-year-old and get
3 away with it, that there's going to be a significant punishment
4 handed down for that sort of behavior. You don't get to meet
5 with a 15-year-old when you're 40 years older than she is. So
6 there has to be the general deterrence.

7 And specific deterrence, obviously we need to make sure
8 that Mr. Sheltra doesn't do it again. And I submit to the
9 Court that giving a sentence of 120 months, a 10-year sentence,
10 is not -- would not provide adequate deterrence, because it
11 would not capture the other bad conduct that he did and the way
12 that it presented, because he committed perjury, he obstructed
13 justice, he doesn't get acceptance of responsibility, so then
14 there's no incentive to go -- to plead out if you can go to
15 trial and lie and then you still get the mandatory minimum.
16 There has to be a consequence for these other factors that --
17 that are presented by Mr. Sheltra.

18 Also, there has to be a factor -- an acknowledgment that
19 he got a five-level enhancement for being a repeat and
20 dangerous sex offender because of what he did with the two
21 discrete, separate enticement activities that he engaged in.
22 This is -- there has to be accountability for all of this
23 conduct to deter him and to ensure that others who might think
24 that "This is not such a bad deal. I can do 10 years because
25 I'll get to have sex with a 10-year-old," we need to make sure

1 that they know, no, anybody who thinks that this is a good
2 idea, you're going to have a hefty consequence that you're
3 going to have to pay.

4 Making another sentencing factor is the need for rehab or
5 treatment. He's not interested in it. He's not there. If
6 he's continuing to lie today, that he didn't have -- that
7 everything was misconstrued and he doesn't have a sexual
8 interest in children, sex offender treatment is not going to
9 happen. He won't take it or it will just be wah, wah, wah.

10 Sorry.

11 It's -- it will just be gibberish to talk to him, because
12 he's not there. You have to have some understanding to go into
13 treatment successfully, and the Court knows. You have to be
14 willing to expose yourself and be challenged by what's being
15 presented to you, but you have to admit certain fundamental
16 truths about yourself, and a fundamental truth about Randy
17 Sheltra is that he has a sexual interest in children that is
18 persistent. It has lasted for a very long time. According to
19 Victim 1, it started when he was a teenager. It's existed his
20 entire life, and now he's sitting in jail because of that.

21 That is what he has to do for effective treatment to
22 happen, and instead Mr. Sheltra's saying it was all a giant
23 misunderstanding.

24 So yes, he absolutely needs treatment, but I don't know
25 that it would have any good if he is in a mind-set where he can

1 take advantage of it, and so then we will be back to the place
2 where, again, untreated, unrepentant sex offender let loose,
3 and his risk of harming the community would remain.

4 THE COURT: Let me ask you one issue that is not on
5 this topic, but I just remembered that I forgot to ask you.
6 Mr. Sheltra says that the facts in paragraph 29 are not
7 accurate in that he was in fact investigated by the police.
8 Now, that may not be inconsistent with she ultimately did not
9 go through with her complaint due to backlash she faced from
10 her family, but what about his allegation and his counsel's
11 allegation, which we haven't seen evidence for, that there was
12 a police investigation? What, if anything, do you know about
13 that?

14 MS. MASTERSON: Well, I looked to the victim impact
15 statement that we filed with the Court from Victim 1, and in it
16 she wrote, "I was not able to trust anyone, especially family.
17 I was completely rejected by the entire family once I filed a
18 police report in the summer of 1989." And then she wrote near
19 the end, "When my uncle was arrested, I knew I had to come
20 forward and try to make sure he would never be able to
21 victimize another young female. Was it hard? Yes. It was
22 extremely hard and entirely scary, but I knew I had to do the
23 humane thing and correct what I had not been able to accomplish
24 back in 1989." And now she went on to say that she's been
25 rejected by the family members.

1 So I believe she did go to the police. My understanding
2 based on our conversations with her was that she got bad
3 family -- no family support, was essentially ostracized, and I
4 believe that she withdrew the report, though if I may peek in
5 the back. The agent is nodding yes, so I believe that that's
6 what happened. So he may have been questioned. I don't know.
7 But I do believe that there was a police report and it did
8 not --

9 THE COURT: Okay. So from your perspective, and I
10 assume that's what the probation officer was relying on, it is
11 accurate that she reported it to the police and that she did
12 not go through with it?

13 MS. MASTERSON: That I believe is correct.

14 THE COURT: Okay.

15 MS. MASTERSON: I have just a couple more comments,
16 your Honor. I feel like I've gone on a long time.

17 With respect to the unfair and allegedly arbitrary
18 Sentencing Guidelines, I -- counsel argued that eight levels
19 because the minor was under 12 is unfair and it appears to be
20 arbitrary. You know, I would actually think about this one
21 more if our victim in this case was 11-1/2 and there was a
22 shading on that. Our victim was 10, all right? Eight levels
23 up is fine for an individual who shows up. That's not
24 arbitrary. That is a clean break. If you're going to have a
25 10-year-old, that's -- that is different. She wasn't 11-1/2.

1 There's -- it's not like, well, why, it's only 6 months
2 because -- you know, I should get four because it was so close.
3 No. She's two years away from the next level. Eight months
4 [sic] is fine.

5 And why is five levels, is that something that's fine for
6 the repeat and dangerous sex offender? Common sense answers
7 that one, your Honor. We have two discrete instances that he
8 was convicted of where he was a sexual predator of children,
9 one 10, one 15. Five levels for that repeated behavior is --
10 is entirely reasonable.

11 With respect to the sentence, as we stand -- as I stand
12 here before the Court, Mr. Sheltra is, as I've said before and
13 I just need to say it again, unrepentant, without remorse,
14 without insight, not interested or amenable to treatment. He
15 denies everything, even today. He lied under oath. He showed
16 up for sex with a 10-year-old. He met for sex with a
17 15-year-old. He chased obsessively after the mother of a
18 9-year-old so that he could have sex with that 9-year-old, and
19 that obsession lasted a year. He was trolling another person,
20 the Plattsburgh person, for sex with a minor that he told us
21 about.

22 The risk of harm presented by this individual to the
23 community is off the charts. All of the Section 3553(a)
24 factors insist on a significant sentence. The most important
25 one, as I've made clear, is the risk of future harm that he

1 presents. The only way to keep the community safe from Mr.
2 Sheltra, because he's not going to get any better, is
3 incarceration. It's why the guidelines have set life as where
4 he ought to be.

5 There are no mitigators here. The only mitigator that was
6 advanced is that he was a good worker, but I've got to question
7 that given that he was texting with a mother about sex with her
8 10-year-old while he was on the job. But there's no other
9 mitigators that are here, just it's a really long time. And we
10 agree, it's a really long time. But we don't see any reason
11 that has been presented to deviate or vary from the guideline
12 level of life.

13 But we recognize that it's life, right, and it is a
14 significant sentence, and other courts may or may not. We're
15 in Vermont, where our court, your Honor, doesn't just follow
16 the guidelines blindly and say that's it, that's the way it's
17 got to be. And frankly, that's one of the blessings about
18 being in Vermont, for the Government and for Mr. Sheltra, where
19 I know the Court is thinking about this, which is why we
20 offered an alternative where we think that given the totality
21 of the circumstances, the offense conduct, the perjury, the
22 multiple victims, that a sentence of at least 200 months --
23 though I'm going to up that. I think 220.

24 After what happened today, he is nowhere near being
25 anywhere close to being able to be released. Not with the

1 things that he said today. He presents way too much of a risk,
2 and we think that there has to be a significant sentence to
3 address the immediate harm that he presents and then a
4 significant period of supervision. I know the Court isn't a
5 fan of lifetime, but in the appropriate case it will do it, and
6 I know the Court has. I think lifetime here is appropriate
7 given that his lifetime has had sexual assaults against
8 children, hands-on sexual assaults against children, and no
9 insight.

10 So we ask the Court at least 220 months followed by a
11 lifetime period of supervision.

12 THE COURT: Thank you.

13 MS. MASTERSON: Thank you.

14 THE COURT: Mr. Kaplan, anything further from you?

15 MR. KAPLAN: Just briefly, Judge.

16 To clear up one thing, in my sentencing memorandum, I said
17 the following. This is on page 6: "In Count Two, certainly
18 Mr. Sheltra's conduct was more serious in that the evidence
19 introduced at trial was that on one occasion he touched a
20 13-year-old girl mostly above her clothing, in an inappropriate
21 manner." So it wasn't my intent to acknowledge that he
22 actually did that, but I assumed that the Court would listen to
23 what was said at trial and put some weight on that, and so I
24 think it was mischaracterized by the Government, probably
25 unintentionally, but that wasn't my intent.

1 I do think the charts are helpful. They talk about sexual
2 abuse in addition to talking about child pornography. I
3 referenced the one that deals with sexual abuse. I think it is
4 interesting to know what the average is in these cases.
5 Obviously the Court will make any distinction it wants to.

6 I was somewhat surprised to hear the Government minimize
7 Rodimon's conduct. To argue that, well, maybe it's okay
8 because he thought he had a relationship with the mother I
9 don't think in any way negates just how serious that conduct
10 was. But I agree with the Government that case is closer in
11 terms of what took place to this case, and if that's the case,
12 I don't know why a 10-year sentence, at least a sentence in the
13 range of 10 to 14 years, is not appropriate.

14 And Folks, one other misstatement. He was also convicted
15 of sex trafficking with a minor, which carried a mandatory
16 minimum of 10 years.

17 THE COURT: All right. Thank you.

18 The Court begins with the presentence report. I am going
19 to strike paragraphs 25, 26, 27, 28, and 30 from the
20 presentence report. I'm going to maintain 24, 29, and 31 with
21 the addition to 31 of the "alleged" abuse. The Court thinks
22 this strikes the appropriate balance between ensuring that
23 inflammatory information that has not been proved up does not
24 remain in the presentence report but also reflecting that V1
25 was on the Government's witness list; she was going to be an

1 impeachment or rebuttal witness on the issue of whether or not
2 any of the conduct predated Mr. Sheltra's stroke; and she did
3 in fact reach out to law enforcement after his case became
4 public and, unsolicited, made a report that indicated that she
5 had been a previous victim and provided the dates, and the
6 Court finds that that is important information not only for the
7 context in which this occurred and to rebut the defense of a
8 medical condition but also for supervision purposes.

9 So with that alteration, the Court adopts the presentence
10 report as its findings of fact in this matter.

11 With regard to obstruction of justice, an enhancement for
12 perjury under Section 3C1.1 requires a sentencing court to find
13 that the defendant willfully and materially committed perjury,
14 which is the intentional giving of false testimony as to a
15 material matter, and the fact that a defendant testifies at
16 trial and is disbelieved by the jury and convicted is not alone
17 sufficient evidence of perjury to bring about the sentence
18 enhancement and -- because you could have testified from
19 inaccurate testimony due to confusion, mistake, or faulty
20 memory.

21 In this particular case, the Court does find that there
22 were two instances of material false statements made willfully,
23 and one was Mr. Sheltra testified under oath that he had no
24 sexual interest in children, and the other he testified that
25 when he asked ER to send him pictures of her genitalia, he

1 thought he was communicating with a woman named Treena. I'll
2 take the first issue first.

3 Mr. Sheltra thinks that he has been misunderstood. I
4 think he has been partially misunderstood. So I am confident
5 that he has an interest in sexual activity with people other
6 than children and that he was interested in the mothers of
7 these children, but it is not accurate that that is the only
8 area of his interest, and the evidence to the contrary is
9 compelling. So prior to the counts of conviction, he had a
10 lengthy exchange with a woman -- or a purported woman with --
11 whose name was Alisha with a capital A: "I really want to F
12 you, but I want both."

13 "I am so f'ing horny, about to cum thinking about f'ing
14 you both. Please hurry home, Randy."

15 "That's really good because I'm so f'ing horny, and I
16 definitely can't wait to F you and her."

17 "God, I can't wait to F both of you. I want to cum deep
18 inside you both."

19 "When are you guys coming home so I can F you both?"

20 "Still desperately wanting you both."

21 "Hi Alisha. Wanting you two so badly. I've been waiting
22 to hear from you. I need you both now. I want the both of you
23 so bad."

24 Then with the undercover agent who's got the daughter
25 Maddie, statements such as "When my mouth is bringing pleasure

1 to your daughter, it will be you that is holding her hand,
2 caressing her, and encouraging her."

3 "While my comments regarding bringing Maddie pleasure are
4 genuine, I look forward to being intimate with both you and
5 her."

6 "I'll then proceed slowly to position her and I -- so that
7 I can tongue her young labia and stimulate her clit with my
8 lips and tongue."

9 "I want to feel her cum in my mouth, babe. I want to suck
10 on her beautiful little pussy as she quivers in the pleasure of
11 orgasm." And it goes on and on.

12 The correspondence with ER is also graphic. It indicates
13 a clear interest in children. If that was not enough, the
14 Government showed images of child pornography on the
15 defendant's phone.

16 He didn't need to testify that he had no sexual interest
17 in children. That was not something that -- he could have said
18 he had a wide range of sexual interests, and he did, but his
19 testimony was he was never interested in the children; he was
20 only interested in the mothers; the mothers seemed to be
21 offering up their children; to -- to ingratiate himself with
22 the mothers, he pretended to have an interest in their
23 children, and the evidence was very clearly to the contrary.

24 The other instance of obstruction of justice was the
25 testimony that he thought he was communicating with Treena when

1 he was soliciting imagery from ER, sexual child pornography
2 from ER, and the problem with that testimony is that the
3 chronology does not work out. He asked for the images first,
4 and it was only after he asked for the images that there was
5 this mention of anal sex which he thought -- or he testified
6 confused him as to who he was speaking with.

7 So the defendant's testimony that he had no sexual
8 interest in children was contradicted by the evidence presented
9 at trial, specifically the defendant's correspondence with the
10 undercover officer in which he wrote to the undercover officer
11 about how to groom the child to be willing to engage in sexual
12 activity with him and her mother and what sexual acts he wished
13 to perform on the child and her mother; the defendant's
14 correspondence with ER in which he wrote about feeling her
15 body, having ER naked at his residence, performing oral sex on
16 ER, having sexual intercourse with ER, and asking for pictures
17 of ER's genitalia; and then the images of child pornography on
18 the phone.

19 With regard to Treena, the defendant testified that when
20 he asked ER to send him pictures of her genitalia, he thought
21 he was communicating with Treena, an adult woman with whom he
22 was engaged in a sexual relationship. The defendant testified
23 that his interactions with Treena involved anal sex and thus
24 when ER mentioned engaging in anal sex with her boyfriend, the
25 defendant believed he was speaking with Treena. This testimony

1 was false as the reference to anal sex was made after the
2 defendant's first request to ER that she send him a picture of
3 her genitalia. The defendant's false testimony was related to
4 material facts, material in itself, and made with the intent to
5 purposely obstruct justice because, if credited, defendant's
6 testimony would negate his motive necessary for Count 1 and
7 Count 2 and would negate an essential element of Count 3 that
8 he requested child pornography from ER, and on that basis the
9 Court finds that the obstruction-of-justice enhancement should
10 apply.

11 With regard to the computer enhancement, the Second
12 Circuit has endorsed the use of computer enhancement in child
13 pornography and child exploitation charges. In the Sentencing
14 Guidelines, the guidelines indicate that the computer
15 enhancement should not apply if it is only incidental. They
16 give an example of using the computer to buy tickets to take a
17 minor to some place, and that would be an incidental use.

18 In the District of Vermont, because of the criticisms of
19 the child pornography guidelines, the Court has typically not
20 imposed the computer enhancement when it is an essential
21 element of the offense, it's the interstate commerce
22 connection, and the person has engaged in peer -to-peer
23 software, which is the only way you can access it is through
24 the computer.

25 This is a very different case. There's active

1 solicitation of sex on the Internet, finding people through it,
2 communicating with them, and I agree with the Government that
3 the computer allows a degree of anonymity, it allows the person
4 to take the activity far further than they could in person, and
5 it captures some element of the offense that allows for more
6 multiple victims, more graphic testimony -- or graphic
7 communications, and an ability to hide behind anonymity in the
8 event that the person is not a willing recipient.

9 So the Court is going to apply the computer enhancement in
10 this case as well.

11 With regard to the enhancement for a pattern of sexual
12 activity, as -- the defendant recognizes that we have two
13 separate occasions of prohibited sexual conduct. We have the
14 conduct underlying Count 1 and the conduct underlying Count 2,
15 so the Court does not need to include any conduct with Victim 1
16 in order to support that enhancement.

17 The Court begins with a guideline calculation.

18 Pursuant to the decisions of the Supreme Court in *United*
19 *States vs. Booker* and *Gall vs. United States*, and the Second
20 Circuit Court of Appeals' decision in *United States vs. Crosby*,
21 in determining the following sentence, the Court has considered
22 the United States Sentencing Guidelines applicable in this
23 case, including all departure authority contained in the
24 guideline policy statements, as well as all the factors
25 enumerated in 18 USC, Section 3553(a).

1 The Court finds as follows:

2 The offense of Counts 1 and 2, attempted interstate
3 enticement of a minor to engage in sexual activity, in
4 violation of 18 USC, Section 2422(b), occurred on or about
5 September 7th, 2017, and from on or about August 20th to 31st
6 of 2017. The offense of Count 3, attempted receipt of child
7 pornography, in violation of 18 USC, Section 2252(a)(2) and
8 2252(b)(1), occurred on or about August 25th, 2017. Hence the
9 Sentencing Guidelines apply.

10 Counts 2 and 3 are grouped together as Count Group 2
11 pursuant to U.S. Sentencing Guidelines Section 3D1.2(b) because
12 these counts involved the same victim, ER, and two or more acts
13 or transactions connected by a common criminal objective or
14 constituting part of a common scheme or plan. Pursuant to U.S.
15 Sentencing Guidelines Section 3D1.3(a), since Count 2 results
16 in the higher offense level, it will be the controlling
17 guideline calculation for Count Group 2.

18 The guideline for Count 1 is found in Section 2G1.3 of the
19 Guidelines Manual, November 1st, 2018, edition. Pursuant to
20 Application Note 1 of that section, a "minor" includes
21 fictitious individuals who a law enforcement officer
22 represented had not attained the age of 18 years and could be
23 provided for the purpose of engaging in sexually explicit
24 conduct. Therefore, the fictitious 10-year-old girl described
25 by the undercover officer will be used as the minor victim of

1 this offense for the purpose of the guideline calculation.

2 The defendant was convicted of violating 18 USC, Section
3 2422(b); therefore, the base offense level is 28 pursuant to
4 U.S. Sentencing Guidelines Section 2G1.3(a) (3) .

5 Specific offense characteristics apply:

6 The offense involved the use of a computer or an
7 interactive computer service, Craigslist, to entice, encourage,
8 offer, or solicit a person to engage in prohibited sexual
9 conduct with the minor. The defendant engaged in emails with
10 the undercover officer enticing and encouraging the "mother" of
11 the minor on how to groom the child to be willing to engage in
12 sexual activity with him and her mother and what sexual acts he
13 wished to perform on the child. Therefore, the offense level
14 is increased by two levels pursuant to U.S. Sentencing
15 Guidelines Section 2G1.3(b) (3) (B) .

16 U.S. Sentencing Guidelines Section 2G1.3(a) (3), applies
17 and the offense involved a minor who had not attained the age
18 of 12 years. Therefore, the offense level is increased by
19 eight levels pursuant to U.S. Sentencing Guidelines Section
20 2G1.3(b) (5) .

21 The Court makes the following findings by a preponderance
22 of the evidence, pursuant to *United States vs. Dunnigan*, that
23 the defendant willfully obstructed or impeded or attempted to
24 obstruct or impede the administration of justice when he
25 provided false testimony at trial. Specifically, the Court

1 finds that the defendant testified under oath that he had no
2 sexual interest in children; and the defendant testified under
3 oath that when he asked ER to send him pictures of her
4 genitalia, he thought he was communicating with Treena.

5 The defendant's false sworn testimony was related to
6 material facts and made with the intent to purposefully
7 obstruct justice because, if credited, defendant's testimony
8 would negate his lack of motive for Counts 1 and 2 and would
9 negate an essential element of Count 3, his request for child
10 pornography from ER. Therefore, the offense level is increased
11 by two levels pursuant to U.S. Sentencing Guidelines Section
12 3C1.1.

13 The adjusted offense level for Count 1 is 40.

14 The guideline for Count Group 2 is found in Section 2G1.3
15 of the Guidelines Manual, November 1st, 2018, edition.

16 The defendant was convicted of violating 18 USC, Section
17 2422(b); therefore, the base offense level is 28 pursuant to
18 U.S. Sentencing Guidelines Section 2G1.3(a)(3).

19 Specific offense characteristics apply:

20 The offense involved the use of a computer or an
21 interactive computer service, Craigslist, to persuade, induce,
22 and entice a minor to engage in prohibited sexual conduct. The
23 defendant engaged in online and text message communications
24 with ER in attempts to have her engage in sexual conduct with
25 him and successfully arranged for them to meet, where they did

1 engage in sexual conduct. Therefore, the offense level is
2 reduced -- increased by two levels pursuant to U.S. Sentencing
3 Guidelines Section 2G1.3(b) (3) (A).

4 The offense involved the commission of sexual contact
5 between the defendant and ER when they met in the defendant's
6 car and he placed his hand on her breast, under her shirt but
7 over her bra, and placed his hand on her vagina over her pants.
8 Therefore, the offense level is increased by two levels
9 pursuant to U.S. Sentencing Guidelines Section 2G1.3(b) (4) (A).

10 The Court makes the same findings of fact by a
11 preponderance of the evidence for Count -- as it did previously
12 for Count 1, that the defendant willfully obstructed or
13 impeded, or attempted to obstruct or impede, the administration
14 of justice when he provided false testimony at trial.
15 Therefore, the offense level is increased by two levels
16 pursuant to U.S. Sentencing Guidelines Section 3C1.1.

17 The adjusted offense level for Count Group 2 is 34.

18 Units for the multiple-count adjustment are assigned
19 pursuant to U.S. Sentencing Guidelines Section 3D1.4. Count 1
20 is assigned one unit as it has the highest offense level.
21 Count Group 2 is assigned one-half unit as it has an offense
22 level that is five to eight levels less serious than Count 1.
23 There are a total of 1.5 units; therefore, the offense level
24 for Count 1 is increased by one level.

25 The combined offense level is 41.

1 The defendant qualifies as a repeat and dangerous sex
2 offender against minors pursuant to U.S. Sentencing Guidelines
3 Section 4B1.5(b) (1). The Court makes the following findings:

4 The offense of conviction is a covered sex crime, neither
5 Section 4B1.1 (career offender) nor subsection (a) of Section
6 4B1.5 applies, and the defendant engaged in a pattern of
7 activity involving prohibited sexual conduct.

8 The defendant engaged in at least two separate occasions
9 of prohibited sexual conduct:

10 One, the conduct underlying Count 1 of the second
11 superseding indictment. Specifically, the defendant's
12 attempted enticement of a minor to engage in sexual activity
13 which he communicated with the -- when he communicated with the
14 undercover officer, whom he believed was the mother of a
15 10-year-old female child who was willing to make the child
16 available for prohibited sexual conduct with the defendant.

17 This conduct qualifies as prohibited sexual conduct as it
18 violates 18 USC, Section 2422(b).

19 The conduct underlying Count 2 of the second superseding
20 indictment. Specifically, the defendant's attempted enticement
21 of a minor to engage in sexual activity when he communicated
22 with ER to induce her to engage in prohibited sexual conduct.
23 Additionally, when the defendant met with ER and did engage in
24 sexual conduct with -- contact with the minor between the ages
25 of 12 and 16.

1 This conduct qualifies as prohibited sexual conduct as it
2 violates 18 USC, Section 2422(b) and 2244(a)(3).

3 Therefore, the offense level is increased by five levels.

4 The enhanced offense level is 46.

5 The defendant entered a not guilty plea, proceeded to
6 trial, and was convicted; therefore, there is no reduction for
7 acceptance of responsibility.

8 Pursuant to Chapter Five, Part A, comment note 2, in those
9 instances where the offense level is calculated in excess of
10 43, the offense level will be treated as a level 43.
11 Therefore, the total offense level is 43. The defendant has
12 zero criminal history points, resulting in a criminal history
13 category of I. The guideline range of imprisonment for an
14 offense level of 43 and a criminal history category of I for
15 Counts 1 and 2 is life and for Count 3 is 240 months due to the
16 statutory maximum.

17 The guideline term of supervised release is five years to
18 life per count. The defendant is ineligible for probation.

19 In addition to the Sentencing Guidelines, the Court
20 considers the factors set forth in 18 USC, Section 3553(a), in
21 an effort to impose a sentence that is sufficient, but not
22 greater than necessary.

23 In deciding what is a sufficient, but not greater than
24 necessary, sentence, the Court is directed to consider a number
25 of factors: the nature and circumstances of the crime; your

1 history and characteristics; the need for the sentence imposed;
2 the kind of sentences available; the need to avoid unwarranted
3 sentencing disparities between defendants with similar criminal
4 histories who've committed similar crimes, and that's why we're
5 talking about what happens in other cases and what kind of
6 sentences people received. The goal is to be fair to you and
7 to be fair to them as well.

8 In deciding the need for the sentence imposed, the Court
9 is directed to reflect the seriousness of the offenses; promote
10 respect for the law; impose just punishment; protect the public
11 from future crimes by you; impose what we call specific
12 deterrence, say to you, "Mr. Sheltra, don't do this. It has
13 consequences," and hopefully you'll be motivated, and also
14 general deterrence, say to the community at large, "Children
15 are our most vulnerable citizens. We have to protect them. We
16 can't allow this type of activity to occur, either online or in
17 person, because it victimizes them in a way that many, many
18 years of therapy are not going to address." The Court also
19 needs to make sure you get rehabilitation, mental health
20 treatment, substance abuse treatment, vocational and
21 educational opportunities, medical treatment in the most
22 effective manner.

23 In this case, the conduct is serious by any measure. It
24 is soliciting sexual contact of the most intimate kind with
25 very young children and actually meeting up with someone who

1 you knew was not of the age of consent, and I do believe you
2 believe genuinely that you're just a person who's very curious,
3 you have a wide range of sexual interests; if somebody
4 introduces a topic, you're, you know, on board to discuss it
5 further, that's what you want to do. But in this case you
6 actually showed up to meet the undercover officer, and you
7 actually had in-person conduct with ER, and the danger of your
8 fantasy world is acting on it, and it's a real danger, and it
9 seems incredible that there are a wealth of victims willing to
10 send people -- effectively make their own child pornography and
11 send it to complete strangers, but it happens every day.

12 I don't think you appreciate the danger to the child. I
13 say that you do that genuinely. I think that you think that
14 it's society's values that are doing this, but I can tell you
15 after having met many victims of sexual abuse, they don't --
16 they don't recover from it. It's often a lifetime problem. It
17 affects their relationships with other people, how they view
18 themselves, and that's because they're children, and they can't
19 process that, and they can't separate out whether they agreed
20 to it or they went along with it, why they didn't tell anybody,
21 why they didn't protect themselves. It's a very, very damaging
22 thing to do, and it's almost impossible to repair the damage.
23 And that's something that you do need to appreciate. Whether
24 you think that a wide array of sexual interests is okay, the
25 real harm to a victim is something that you do need to

1 appreciate, and I'm not convinced that you're at that point
2 now.

3 I'm not going to penalize you for going to trial. That's
4 what we do. I wouldn't expect you to plead guilty if you
5 didn't think you were guilty. So I respect your right to go to
6 trial and present a defense, and you did so.

7 Nothing in your criminal history that I know about would
8 suggest that you would be here. So you come to us with zero
9 criminal history points, long-term employment, responsible
10 employment in positions of management, as your attorney pointed
11 out. We had one juror that said he couldn't sit on your case
12 because you had been an excellent manager. I read the letter
13 from your daughter, and she had nice things to say about you.
14 But things got very far off track, and you could have stopped
15 yourself. You knew enough that if that was in fact an
16 undercover cop, that you were going to be in trouble, and --
17 and you mistakenly believed that if you asked that question, an
18 undercover cop had to tell you the truth. But you knew enough
19 and it's there in the communications that this was dangerous
20 territory that you were in and that you could go to jail. And
21 in fact, you told that to ER, that, "Hey, we can't have sex if
22 you're not going to -- if you're not of the age of consent
23 because I'm going to go to jail," and then you told somebody
24 else, "Yeah, if we were in a different place, we certainly
25 would be having sex."

1 I think that a life sentence is way beyond what would be
2 imposed in this case, and I think the guidelines in that
3 respect are unreliable. The incarceration of you for the rest
4 of your lifetime for these offenses would be an unjust
5 sentence. That being said, the conduct is serious enough and
6 the danger to the public is serious enough that a lengthy
7 sentence is warranted.

8 In deciding what is an appropriate sentence, I have
9 considered other cases, but I've also considered that we're in
10 the midst of a pandemic and that you yourself have suffered.
11 You've been in quarantine more times than I can count. You had
12 COVID, and you haven't been able to engage in any programming,
13 and there's no certainty that you will be able to anytime in
14 the future. So the Court has factored that in.

15 I am effectively going to impose a sentence that you will
16 be under supervision for a lengthy period of time, either by
17 incarceration or supervision, but I've tried to counterbalance
18 the availability of supervised release with the incarcerative
19 sentence so that I might be imposing a slightly more lenient
20 incarcerative sentence and counterbalancing it with a longer
21 time of supervised release. I do believe supervised release is
22 sufficient to protect the public, especially for our online
23 predators. Ms. Masterson is right that people violate, but we
24 also catch them, and they go back to jail. So in the event
25 that that's going to be something that you continue to do, you

1 will go back to jail.

2 For all of those reasons, the Court has determined that a
3 total sentence of 180 months, with credit for time served,
4 followed by a 30-year term of supervised release is a
5 sufficient, but not greater than necessary, sentence.

6 It is the sentence of the Court that the defendant be
7 committed to the custody of the Federal Bureau of Prisons for
8 180 months on Counts 1 and 2 and Count 3, all counts to be
9 served concurrently, to be followed by a 30-year term of
10 supervised release on each count, served concurrently.

11 The conditions of supervision are as follows:

12 You must not commit another federal, state, or local
13 crime.

14 You must not unlawfully possess a controlled substance.

15 The Court finds that the defendant presents a low risk of
16 substance abuse and, in accordance with 18 USC, Section
17 3583(d), 3563(a)(5), suspends the requirement that the
18 defendant participate in drug testing while under supervision.

19 You must cooperate in the collection of DNA as directed by
20 the probation officer.

21 You must comply with the requirements of the Sex Offender
22 Registration and Notification Act, 42 USC, Section 16901,
23 *et seq.*, as directed by the probation officer, the Bureau of
24 Prisons, or any state sex offender registration agency in the
25 location where you reside, work, are a student, or were

1 convicted of a qualifying offense.

2 You must comply with the standard conditions of
3 supervision adopted by this court. These conditions are
4 imposed because they establish the basic expectations for your
5 behavior while on supervision and identify the minimum tools
6 needed by probation officers to keep informed, report to the
7 Court about, and bring about improvements in your conduct and
8 condition.

9 You must participate in an approved program of sex
10 offender evaluation and treatment, which may include polygraph
11 examinations, as directed by the probation officer. Any
12 refusal to submit to such assessment or tests as scheduled is a
13 violation of the conditions of supervision. You will be
14 required to pay the cost of treatment as directed by the
15 probation officer. The Court authorizes the probation officer
16 to release psychological reports and/or the presentence report
17 to the treatment agency for continuity of treatment.

18 You must not use computer devices, as defined in 18 USC,
19 Section 1030(e)(1); electronic devices capable of Internet
20 access; or any media storage devices until a Computer Use Plan
21 is developed and approved by your treatment provider and/or
22 probation officer. Such plan, at a minimum, may require you to
23 submit a record of Internet use, online screen names,
24 encryption methods, and passwords utilized by you.

25 You must allow, at the direction of the probation officer

1 and at your expense, the installation of monitoring hardware or
2 software to monitor your use of a computer system,
3 Internet-capable devices, and/or similar electronic devices
4 under your control.

5 You must provide the probation officer with access to any
6 requested records, such as bills or invoices for credit cards,
7 telephone and wireless communication services, television
8 provider services, and Internet service providers.

9 You must provide the probation officer with a complete and
10 current inventory of the number of computers, as defined in 18
11 USC, Section 1030(e) (1); electronic devices capable of Internet
12 access; or any media storage devices used, possessed, or in
13 your control along with a monthly log of computer access.

14 You must not access any computer devices, as defined in 18
15 USC, Section 1030(e) (1); electronic devices capable of Internet
16 access; or any media storage devices that utilize any
17 encryption, anonymization, "cleaning" or "wiping" software
18 programs.

19 You must not view, access, or possess images or videos
20 depicting sexually explicit conduct involving adults, as
21 defined in 18 USC, Section 2256(2) (A), unless a psychosexual
22 evaluation determines that access to adult pornography will
23 not -- will not impair treatment goals or the safety of the
24 community; child pornography, as defined in 18 USC, Section
25 2256(8); or visual or text content involving minors which has

1 sexual, prurient, or violent interests as an inherent purpose.

2 You must not associate or have contact, directly or
3 indirectly through a third party, with persons under the age of
4 18, except -- I should say directly or through a third party
5 and strike "indirectly," except in the presence of a
6 responsible adult who is aware of the nature of your background
7 and who has been approved in advance by the probation officer.
8 Such prohibited conduct shall include the use of electronic
9 communication, telephone, or written correspondence.

10 You must avoid and are prohibited from being in any areas
11 or locations where children are likely to congregate, such as
12 schools, day-care facilities, playgrounds, theme parks,
13 arcades, unless prior approval has been obtained by the
14 Probation Office.

15 You must not have contact, directly or through a third
16 party, with the victims in this case. Such prohibited conduct
17 shall include the use of electronic communication, telephone,
18 or written correspondence.

19 You must submit your person and any property, house,
20 residence, vehicles, papers, computer, other electronic
21 communication or data storage devices or media, and effects to
22 search at any time, with or without a warrant, by any law
23 enforcement or probation officer with reasonable suspicion
24 concerning a violation of a condition of supervised release or
25 unlawful conduct by the person, and by any probation officer in

1 the lawful discharge of the officer's supervision functions.
2 Such searches may include the removal of such items for the
3 purpose of conducting a more thorough inspection. You shall
4 inform other residents of this condition. Failure to submit to
5 a search may be grounds for revocation of release.

6 The guideline fine range is from \$50,000 to \$500,000. The
7 defendant has not demonstrated an inability to pay -- the
8 defendant has demonstrated an inability to pay a fine. Hence
9 all fines are waived.

10 A special assessment of \$300 is imposed, due immediately.

11 Both the defendant and the Government may have the right
12 to appeal this sentence. In addition, the defendant has the
13 right to appeal his conviction and any pretrial rulings or any
14 trial rulings by the Court. If the defendant is unable to pay
15 the costs of an appeal, he has the right to apply for leave to
16 appeal *in forma pauperis*, in which event we would waive the
17 cost of an appeal, and he may request the court to appoint
18 counsel for him. If the defendant so requests, the clerk of
19 the court shall prepare and file forthwith a notice of appeal
20 on behalf of the defendant. Notice of appeal by the defendant
21 must be filed within 14 days of the date judgment is entered on
22 the docket pursuant to Rule 4(b) of the Federal Rules of
23 Appellate Procedure.

24 Ms. Masterson, do you have anything to dismiss in this
25 case?

1 MS. MASTERSON: We do not, your Honor.

2 THE COURT: Mr. Kaplan, do you have any
3 recommendations as to where Mr. Sheltra serves his sentence?

4 MR. KAPLAN: I would suggest where they provide the
5 counseling that Mr. Sheltra would benefit from if he decides to
6 do that. I'm trying to remember where that is.

7 THE COURT: Are you talking about sex offender
8 treatment and counseling?

9 MR. KAPLAN: Yes. Right.

10 THE COURT: I know that Devens has it. I can also
11 make a recommendation as close to Vermont in a low security
12 setting available.

13 MR. KAPLAN: Actually, Fort Devens I think would be
14 appropriate.

15 THE COURT: All right. And you agree with that, Mr.
16 Sheltra?

17 THE DEFENDANT: I do initially, your Honor, but I
18 would like to see the list just so that I can understand --
19 it's a major step, so I'd like to go over what my opportunities
20 are with Mr. Kaplan, if I could.

21 THE COURT: Okay. Well, we're going to get an amended
22 presentence report, so I'll make a recommendation to Fort
23 Devens and find that it is -- because it is close to Vermont in
24 the lowest security setting available to Mr. Sheltra. I also
25 recommend that he receive sex offender treatment and

1 counseling, which is offered there. I will give Mr. Kaplan and
2 Mr. Sheltra an opportunity to suggest other locations, say in
3 the next five business days.

4 MR. KAPLAN: Thank you, Judge.

5 THE COURT: Anything further in this matter?

6 MR. KAPLAN: No, your Honor.

7 MS. MASTERSON: Not from the Government. Thank you,
8 your Honor.

9 (Court was in recess at 3:55 PM.)

10

11

12 C E R T I F I C A T I O N

13 I certify that the foregoing is a correct transcript from
14 the record of proceedings in the above-entitled matter.

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17 February 10, 2022

Johanna Massé, RMR, CRR

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